

# Civil Rights Issues in West Virginia

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*West Virginia Advisory Committee to  
the U.S. Commission on Civil Rights*

**May 2003**

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# **Civil Rights Issues in West Virginia**

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## Letter of Transmittal

West Virginia Advisory Committee to  
the U.S. Commission on Civil Rights

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The West Virginia Advisory Committee submits this report, *Civil Rights Issues in West Virginia*, as part of its responsibility to advise the Commission on civil rights issues in the state. The Committee approved this report in a vote of 11 to 0, with no abstentions.

Since the early 1990s, the Committee has observed a general stagnation of civil rights progress. Over the years, the Committee has noted news reports and received personal accounts that reveal persistent mistreatment of minorities by law enforcement officials, racially motivated acts of violence, harassment of minorities in schools and workplaces, and barriers to people with disabilities in education and employment. Its reports, *Police-Community Relations in Southern West Virginia* (1993) and *Rising Racial Tensions in Logan County, West Virginia* (1995), covered some of these problems. After these reports were released, the Committee decided to explore the extent of civil rights problems throughout West Virginia. The Committee held planning meetings across the state, consulting with advocates and community leaders, and then conducted three community forums in Logan (1998), Morgantown (1999), and Charleston (2000).

This report summarizes issues addressed at the forums by approximately 50 people. Organized as a summary of issues rather than descriptions of individual forums, it covers four themes: (1) police-community relations, (2) treatment of minority students and students with disabilities in public schools, (3) civil rights issues related to employment, and (4) hate crimes. Based on this information and limited follow-up research, the Committee draws the following conclusions:

1. Incidents of police brutality have heightened longstanding tensions between law enforcement agencies and minorities, particularly African Americans. Adding to the tension is the perception that officers exhibit a pattern of discriminatory treatment and petty harassment, including disproportionate stops and arrests. There are concerns that existing procedures for overseeing police activities and penalizing officers for misconduct are inadequate. As a remedy, some state legislators and advocacy organizations tried to establish a citizen review board but were met with resistance from law enforcement agencies. The scarcity of minority and female officers, especially in the upper ranks, exacerbates tensions between police and minorities. Many allege that efforts to recruit, hire, and promote qualified minority officers have not been sufficiently vigorous.
2. Despite prevention programs and state regulations prohibiting harassment in the public schools, incidents of harassment continue to be reported to state and community organizations. Although some schools and educators have responded effectively, in other cases little has been done, prompting many to urge more stringent monitoring and enforcement.

Schools in the state typically have few people of color in teaching and other professional positions. As a result, minority students are deprived of role models and advocates. At the same time, white students whose appreciation of diversity would be enhanced by contact with minority teachers miss out on this opportunity. Although there are programs to help students transition to college or work, minority parents are concerned that some schools and educators set low expectations for minority students and do not encourage them to prepare for college.

Some state and local education authorities have failed to comply with federal special education law. It was alleged that some county boards of education do not enforce the requirement that special education teachers be state certified. Because of a shortage of trained interpreters, some school systems are said to hire uncertified, less proficient sign language interpreters, to the detriment of deaf students in mainstream classrooms.

3. Against the backdrop of a shrinking state economy, there is deep concern and frustration in minority communities about apparent patterns of racial discrimination in hiring as well as incidents of discrimination and harassment in the workplace. It was alleged that many small businesses engage in informal hiring, drawing on a pool of relatives and friends, setting the stage for discrimination against minority applicants. A contributing factor here is that businesses with fewer than 12 employees are exempt from state antidiscrimination laws. In welfare-to-work programs, it was alleged that minorities are disproportionately placed in programs that provide low pay and little opportunity to get an education or a permanent job.

Adults with disabilities face many obstacles to joining the work force. Major barriers include the lack of affordable health care coverage, accessible public transportation, and assistive technologies in the workplace.

4. The West Virginia Hate Crime Task Force, an advisory committee to the Human Rights Commission, has made impressive strides in improving the state's ability to prevent and respond to hate crimes by collaborating with law enforcement agencies, civil rights organizations, school systems, and community groups. Since the task force began recording incidents in 1992, 120 probable hate crimes were reported through June 2000, most involving racial bias. Yet many at the forums cautioned that this relatively low number is due to underreporting. Reporting of hate crimes and incidents is sporadic and incomplete due to lack of public awareness of the reporting process and the limited number of police departments tracking bias crimes, and because the state's hate crimes statute does not cover crimes motivated by bias against the victim's disability or sexual orientation. Considering the likelihood of underreporting, these statistics show that hate crimes not only continue to be a serious problem, but also may be more serious and widespread than acknowledged publicly.

The Committee believes this report will help the public better understand the wide range of civil rights issues in West Virginia and how established bureaucratic structures can be improved to remedy problems.

Sincerely,

Ranjit K. Majumder, *Chairperson*  
West Virginia Advisory Committee

## West Virginia Advisory Committee to the U.S. Commission on Civil Rights

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\* Appointed to the Committee in February 2002.

\*\* No longer a member of the Advisory Committee.

Gregory Hinton served as chairperson during the planning and holding of the three community forums. Former member Donald Pitts served on the Advisory Committee during the early planning of the project.

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### Acknowledgments

The West Virginia Advisory Committee wishes to thank the staff of the Commission's Eastern Regional Office. The planning and holding of the community forum, and incorporation of affected agency review comments were conducted by Marc D. Pentino, civil rights analyst. The report was written by Catherine Sunshine, independent contractor. Ki-Taek Chun, director of the Eastern Regional Office, assisted during report development and writing stages and supervised the project. Dawn Sweet provided editorial services and prepared the report for publication. Dorothy Pearson-Canty and Furaha Raufu Bey provided production and distribution services.

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## CHAPTER 1

# Background

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Since the late 1980s, the West Virginia Advisory Committee to the U.S. Commission on Civil Rights has been concerned that statewide leadership in protecting civil rights has diminished. From 1988 through 1993, as detailed in the next section, the Advisory Committee sponsored several community forums and fact-finding meetings at which panelists documented worsening civil rights problems in the state. The Advisory Committee followed up on these events by presenting a series of recommendations in its reports to state officials on actions to improve the climate.<sup>1</sup> This heightened attention to civil rights issues resulted in some steps forward; nonetheless, experts and community members testifying at subsequent planning meetings in 1996 and 1997 emphasized to the Committee that race relations had continued to deteriorate and that state agencies had failed to address this problem adequately.

To explore these issues in greater depth and spur stronger efforts for change, the Committee held three community forums across the state, in Logan in November 1998, Morgantown in June 1999, and Charleston in April 2000. The present report provides an overview of current civil rights issues in West Virginia based on testimony at these three forums and limited additional research, presents key findings of the Advisory Committee based on the information gathered, and sets forth recommendations of the Committee for actions to address the problems and improve the situation of civil rights in West Virginia.

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<sup>1</sup> See West Virginia Advisory Committee to the U.S. Commission on Civil Rights, *Police-Community Relations in Southern West Virginia*, 1993, and *Rising Racial Tensions in Logan County, West Virginia*, 1995.

## Activities Leading Up to the Recent Forums

In November 1988, the West Virginia Advisory Committee urged then-governor-elect Gaston Caperton to increase the visibility of his office in the protection of civil rights in the state. He responded by sponsoring a state “civil rights day” on March 21, 1989. That event, coordinated by the Advisory Committee and the state Human Rights Commission, included a proclamation ceremony affirming the administration’s commitment to civil rights and a Senate-House public hearing on civil and human rights legislation. The same day, the Advisory Committee held a community forum at the statehouse to examine bigotry and violence in the state, review state enforcement of civil rights, and obtain information on the state election system.<sup>2</sup> Of the many issues and concerns raised at the forum, perhaps the most serious was the apprehension that racial conflict would increase in the state’s public schools and that state agencies did not have procedures in place to monitor and report these incidents so that necessary action could be taken.

In 1991 and 1993, the West Virginia Advisory Committee held a forum and a fact-finding meeting in Huntington and Logan, respectively, to examine mistreatment of minorities by law enforcement officials as well as allegations that racially motivated acts of violence add to overall racial tensions.<sup>3</sup> Participants at both events alleged that state and city police officers held negative attitudes toward racial minorities, which in turn directly affected law enforcement

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<sup>2</sup> A report of the event titled *Civil Rights Laws and Legislation in West Virginia: A Summary Report* was issued by the West Virginia Advisory Committee to the U.S. Commission on Civil Rights in January 1990.

<sup>3</sup> See West Virginia Advisory Committee, *Police-Community Relations in Southern West Virginia*, and *Rising Racial Tensions in Logan County*.

practices.<sup>4</sup> Residents in minority and low-income neighborhoods claimed that law enforcement officers exhibited a pattern of disparate treatment of African Americans, including abuse—verbal and physical—as well as general insensitivity to crimes committed against minorities.<sup>5</sup>

In its reports on these two forums, issued in 1993 and 1995, the Advisory Committee recommended that Governor Caperton (1) appoint a civilian commission to assess the need for citizen review boards to oversee police activities; (2) appoint a fact-finding task force to investigate underrepresentation of minorities and women in law enforcement; and (3) work with the state's political leadership to denounce cases of police misconduct.<sup>6</sup> Additional recommendations addressed alleged discrimination against blacks in the coal mining industry and racial tension in the Logan County schools. Following the release of the Committee's reports, citizens from Martinsburg, Huntington, and Charleston called for the establishment of civilian review boards for their police departments but were unsuccessful in persuading local leadership to adopt the measure.

In 1996 and 1997, the Advisory Committee held planning meetings in the Eastern Panhandle (Martinsburg), the southeastern region (Beckley), and the capital (Charleston), all areas with relatively large minority populations. At each meeting the Committee conducted an informal briefing session with state officials and community organization representatives who described persistent civil rights problems in the state. These included verbal and sexual harassment of students by their peers in public schools, excessive use of force and other abuses by police, employment discrimination, and a lack of communication and coordination among minority community leaders. Community representatives claimed that the state had not acted to ease racial tensions and address discrimination, resulting in a deterioration of race relations throughout the state. During each meeting, panelists requested that the Committee conduct a more in-depth review of the issues presented and make public its findings.

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<sup>4</sup> West Virginia Advisory Committee, *Rising Racial Tensions in Logan County*, pp. 26–27.

<sup>5</sup> *Ibid.*, pp. 15–18.

<sup>6</sup> *Ibid.*; and West Virginia Advisory Committee, *Police-Community Relations in Southern West Virginia*, pp. 30–31.

Recognizing the Committee's prior interaction with state officials, the members sought to reestablish contact with current state leaders in hope that a coordinated effort could be made to survey state civil rights issues. Toward this end, members met with Governor Cecil Underwood and other state officials in November 1997 to discuss the earlier reports as well as concerns raised at the Martinsburg and Beckley meetings. Governor Underwood was supportive of the Committee and its work, and at his suggestion the Committee participated in the civil rights summit sponsored by the governor in October 1998.

### The Three Community Forums

The planning meetings held in Martinsburg and Beckley made clear that while there were statewide civil rights problems, each region of the state had its own particular issues as well. The Committee therefore selected three regions that would provide geographic diversity and illustrate a range of socioeconomic characteristics found in West Virginia, and held a one-day forum at each site to examine both statewide civil rights problems and issues unique to that region. At each forum, prominent figures in the West Virginia civil rights community, along with law enforcement and school system representatives, were invited to give testimony. Each forum also included an open session in which members of the public offered brief presentations.<sup>7</sup>

### The Logan Forum

The forum in Logan was held on November 17, 1998, with an emphasis on follow-up to the 1993 forum and exploration of the situation in southwestern West Virginia, particularly Logan, Mingo, and McDowell counties. As noted in previous reports, this region has experienced increased racial tensions associated in part with difficult economic conditions in the area's coal mining industry.<sup>8</sup> The long-term decline of the industry is staggering. Statewide, more than 125,000 people were employed in coal mining in

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<sup>7</sup> The chapters that follow are based largely on transcripts from the three forums, which are on file at the Eastern Regional Office of the U.S. Commission on Civil Rights.

<sup>8</sup> West Virginia Advisory Committee, *Rising Racial Tensions in Logan County* and *Police-Community Relations in Southern West Virginia*.

1948; the figure had dropped to only about 15,000 by 1999, and it continues to decline.<sup>9</sup> Population in the counties has declined drastically as well. McDowell County, for example, had almost 99,000 residents in 1950; by 1990 the population had dropped to 35,233, and the 2000 census showed only 27,329 residents, a drop of 22.4 percent in the last 10 years.<sup>10</sup> Mingo County's population shrank by 16.3 percent between 1990 and 2000, while Logan County's dropped 12.4 percent. Poverty rates in the area are considerably higher than the West Virginia average. The latest county-level figures, as of 1999, from the 2000 census, show Logan County with 24 percent, Mingo County with 29.7 percent, and McDowell County with 37.7 percent living in poverty, compared with a statewide average of 17.9 percent living below the poverty line.<sup>11</sup>

Of the three, McDowell County has the highest percentage of African American residents, with 11.9 percent. In Mingo County, 2.3 percent are African American and in Logan County, 2.6 percent.

In this context of economic hardship, speakers at the 1998 forum in Logan testified that racial tensions in police-community relations and employment discrimination have continued, despite earlier reports calling attention to these problems. These tensions also spill over into the schools, particularly given their role as employers and the underrepresentation of minorities among school personnel. Witnesses at the Logan forum included representatives from the state Attorney General's Office, state and local police departments, local school boards, and community organizations, as well as members of the public.

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<sup>9</sup> Beth Gorczyca, "West Virginia After Coal; Peering into a Murky Future," *Huntington Herald-Dispatch*, Sept. 18, 2000. Current statistics on mining employment are available from the West Virginia Office of Miners' Health, Safety & Training at <[www.state.wv.us/mhst](http://www.state.wv.us/mhst)>.

<sup>10</sup> Data for all demographic information in this introduction, unless otherwise noted, come from tables available on the Web site of the U.S. Census Bureau at <[www.census.gov](http://www.census.gov)>.

<sup>11</sup> Other counties in West Virginia also showing high poverty rates include Lincoln County, 27.9 percent; Clay County, 27.5 percent; and Webster County, 31.8 percent. U.S. Department of Commerce, Bureau of the Census, *Population by Poverty Status in 1999 for Counties*, <<http://www.census.gov/hhes/poverty/2000census/popvstat00.html>>.

## **The Morgantown Forum**

The forum in Morgantown, held on June 14, 1999, had two panels: one focused on disability rights issues and the other on civil rights in north central West Virginia, particularly Monongalia County and Marion County.

The disability panel took advantage of expertise available from the International Center for Disability Information,<sup>12</sup> a program based at West Virginia University in Morgantown, which is both a national and state-level resource on disability rights. The center includes the West Virginia Research and Training Center, which works closely with state vocational rehabilitation agencies.

State-level data from the 1990 census showed that West Virginia, at 12.6 percent, had the highest percentage of people with a work disability of any state, followed by Kentucky with 11.4 percent and Mississippi with 11 percent.<sup>13</sup> Of those with work disabilities, the 1990 data showed the state also had the highest percentage who were not working (79.7 percent). The issue of compliance with the Americans with Disabilities Act (ADA)<sup>14</sup> and the Individuals with Disabilities Education Act (IDEA)<sup>15</sup> is therefore particularly serious for West Virginia. Issues addressed at the forum included problems in employment and education as well as other discrimination confronting people with disabilities.

The second panel examined the experiences of racial minorities in north central West Virginia, especially in the public schools. Monongalia County has slightly above the state average of African Americans as a percentage of the population (3.4 percent in 2000 as compared with 3.2 percent statewide) and Hispanics (1 percent as compared with 0.7 percent statewide); the proportion of Asian Americans in Monongalia County, at 2.5 percent, is five times the statewide level of 0.5 percent. Percentages of racial minorities in Marion County are very close to averages for the state.

North central West Virginia, and in particular Monongalia County, where Morgantown is located, has higher income levels and lower pov-

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<sup>12</sup> The center's Web site address is <[www.icdi.wvu.edu](http://www.icdi.wvu.edu)>.

<sup>13</sup> International Center for Disability Information, "Disability Tables," n.d., <[www.icdi.wvu.edu/disability/tables.html](http://www.icdi.wvu.edu/disability/tables.html)>.

<sup>14</sup> 42 U.S.C. §§ 12101–12213 (1994).

<sup>15</sup> 20 U.S.C. §§ 1400–1485 (1988).

erty levels in relation to state averages. Estimates by the U.S. Census Bureau for 1997 show median household income of \$32,365 for Monongalia County, compared with the statewide median of \$27,432; those below the poverty line were estimated at 14.4 percent in Monongalia County, compared with 16.8 percent statewide. Marion County had median income of \$27,987, with 15.7 percent in poverty.

In addition to general issues of discrimination against people of color, speakers at the Morgantown forum stressed the low numbers of minority teachers and other staff in the public school systems of the two counties, as well as discriminatory incidents against minority students at the university level.

### ***The Charleston Forum***

As follow-up to the previous public meeting in Charleston in 1997, the forum in Charleston on April 20, 2000, focused on issues in the capital area and those statewide. Officials from state and city governments, law enforcement representatives, civil rights leaders, community activists, and members of the public presented information and views on civil rights issues, including police-community relations, recruitment and promotion practices within law enforcement agencies, discrimination in employment, and discriminatory treatment more generally.

In the Charleston metropolitan area, which includes Charleston city, areas of Kanawha County outside the city limits, and Putnam County, the African American population is 5.7 percent. People of other minority racial backgrounds are 2.3 percent of the total population, and people of Hispanic background, regardless of race, are 0.6 percent. The African American proportion rises to 7 percent in Kanawha County as a whole and 15.1 percent within the Charleston city limits, while in Putnam County it is only 0.6 percent.

The civil rights situation in Charleston, as the state capital, has received much attention from city and state government and efforts have been made to address problems; however, almost all witnesses agreed that there were still extremely serious problems in the Charleston area and around the state. A major theme in the testimony at the Charleston forum was the inadequacy of recruitment, promotion, and training

for law enforcement personnel as one of the factors leading to discriminatory police behavior toward minority residents.

### **Demographics of West Virginia**

Although there are important variations by region, county, and community, certain statewide characteristics and population and socioeconomic trends are affecting civil rights in the state. Overall, the state's population is barely growing, and it is aging significantly. The percentage of racial/ethnic minorities is growing and is concentrated in certain communities, but the population remains overwhelmingly white. Economic hardship is widespread: throughout the state, poverty, unemployment, and disability levels are higher than national averages, and educational levels and per capita income are lower.

### ***A Slow-Growing, Aging Population***

West Virginia's population grew only 0.8 percent between the 1990 and 2000 censuses—virtual stagnation compared with nationwide growth of 13.1 percent; only North Dakota grew more slowly. Difficult economic conditions in the state are undoubtedly a key cause of both this lack of growth and the marked “graying” of the state's population, as young people seek opportunities elsewhere. Between the 1990 and 2000 censuses, the median age of West Virginians increased significantly, from 35.4 years to 38.9 years—the highest median age of any state in the nation. The population aged 5 to 19—the school-age cohort—decreased to 19.5 percent from 22.1 percent of the total, while the proportion 65 years and older increased to 15.3 percent from 15 percent.

### ***Racial Minorities: Tiny but Growing***

According to the 2000 census, 95 percent of the 1.8 million residents of West Virginia are white, as compared with 75.1 percent for the nation as a whole. The 5 percent minority population includes 3.2 percent of West Virginians who identify themselves as black or African American and 1.8 percent of other racial/ethnic backgrounds. People of Hispanic or Latino origin, of any race, are 0.7 percent of the state's population. Fifteen states have smaller population per-

centages of African Americans than West Virginia; Maine is the only state with as small a percentage of Hispanic population (see figure 1).

While the percentages of minorities in West Virginia are low in comparison with national averages, they increased between the 1990 and 2000 censuses. The African American population grew from 3.1 percent to 3.2 percent of the total. The population of other racial backgrounds jumped from 0.7 percent to 1.8 percent, and that of Hispanic origin went from 0.5 percent to 0.7 percent.

Minority populations are concentrated in certain areas of West Virginia. The population of the Charleston metropolitan area, consisting of Kanawha and Putnam counties, is 5.7 percent African American and 0.8 percent Asian American, and the percentage of African Americans within Charleston city is still higher. Monongalia County is 3.4 percent African American, 2.5 percent Asian American, and 1 percent Hispanic. The African American population of McDowell County, in the far southern part of the state, is 11.9 percent (see figure 2).

### **Low Levels of Education and Income**

Estimates from the 2000 census put the percentage of high school graduates in the state at 75.2 percent, compared with 81.6 percent for the nation. The disparity in college graduates is even greater, with only 14.1 percent of West Virginians holding a bachelor's degree or higher, compared with 25.1 percent in the United States as a whole.

The census reports median household income in West Virginia as \$28,569, only 70 percent of the national median of \$41,343. Almost 10 percent of families have total income of less than \$10,000 a year, compared with 6 percent nationwide. West Virginians below the poverty line are estimated at 19.3 percent, compared with 12.5 percent nationwide (see figure 3).

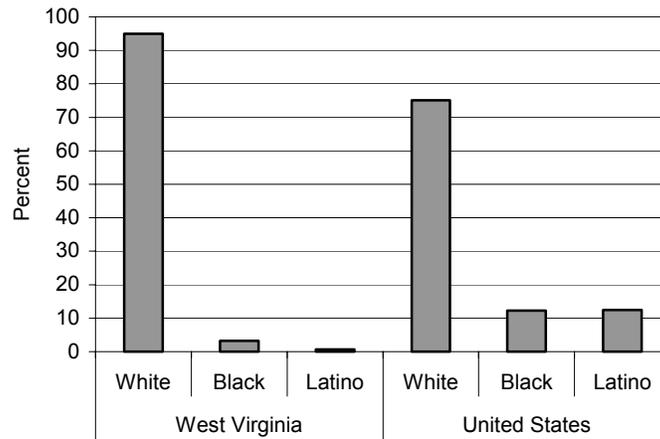
The average unemployment rate for West Virginia in 2000 was 5.5 percent, but the 10.6 percent joblessness rate for black West Virginians was twice the 5.3 percent rate for whites. At a national level the average rate was 4 percent, with 3.5 percent among whites nationwide and 7.6 percent among blacks.<sup>16</sup> Comparable detailed comparisons for household income and poverty are not yet available from the 2000 census. However, the 1990 census showed that the per capita income of black West Virginians, at \$7,416, was approximately three-quarters of the figure for white West Virginians, at \$10,574.

Disability rates are above the national average. In the civilian noninstitutionalized population, 8.2 percent of West Virginian children are disabled (6.7 percent nationally). Among adults 21 to 64 years of age, 22.7 percent of West Virginians are disabled (14.1 percent nationally), and among those 65 years of age and older, 49.6 percent of West Virginians are disabled (40.1 percent nationally) (see figure 4).

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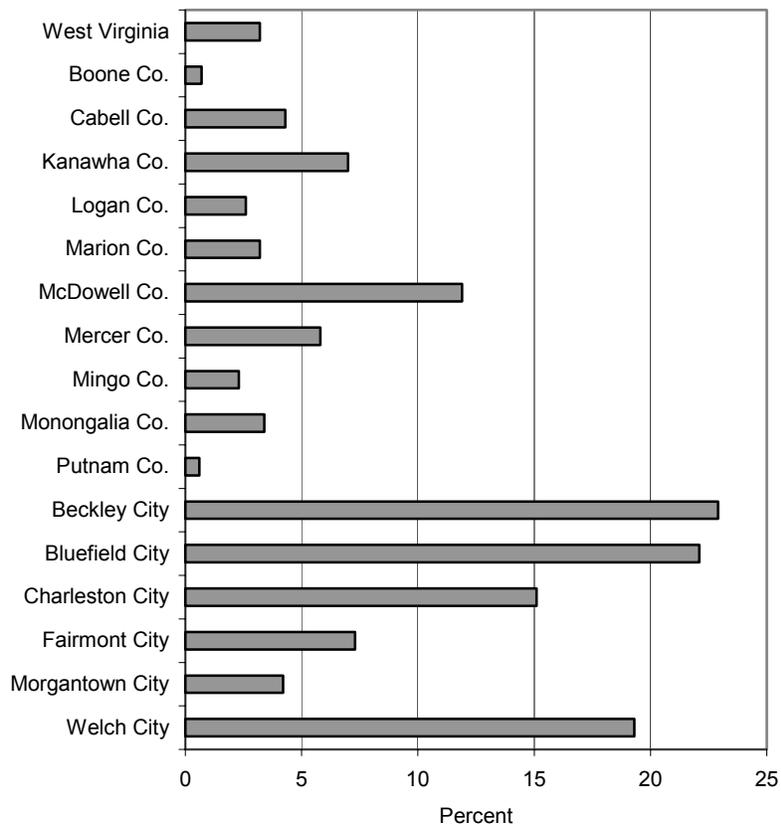
<sup>16</sup> Bureau of Labor Statistics, *Employment Status of the Civilian Noninstitutional Population by Sex, Age, Race, and Hispanic Origin, 2000 Annual Averages*, n.d., <<http://www.bls.gov/lau/table12full00.pdf>>.

**FIGURE 1. Racial Composition of the Population, West Virginia and the United States, 2000**



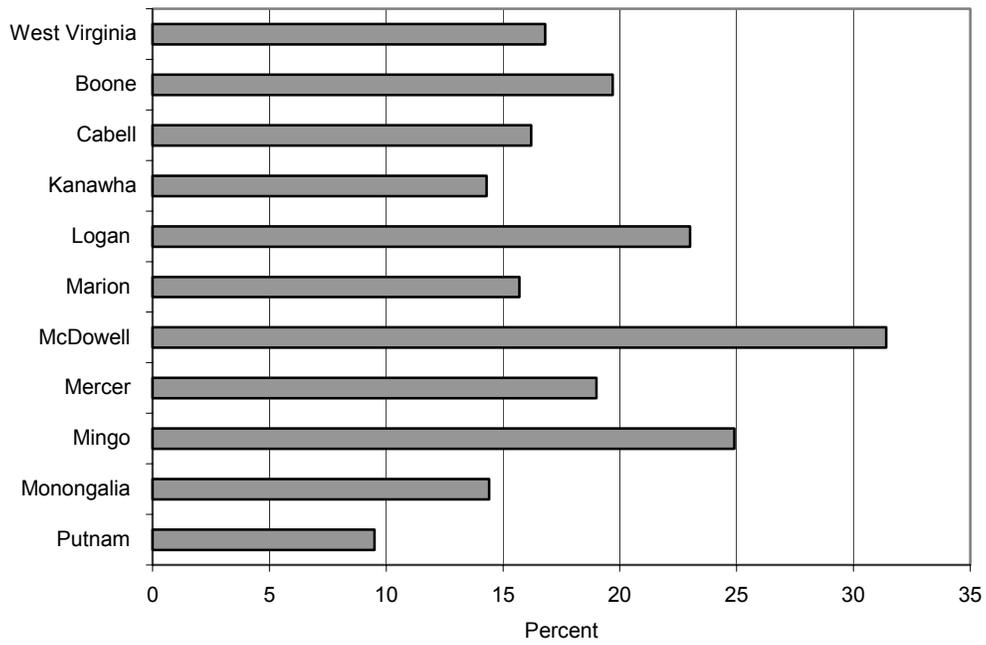
SOURCE: U.S. Department of Commerce, Bureau of the Census, West Virginia QuickFacts.

**FIGURE 2. African American Population in West Virginia, Selected Counties and Cities, 2000**



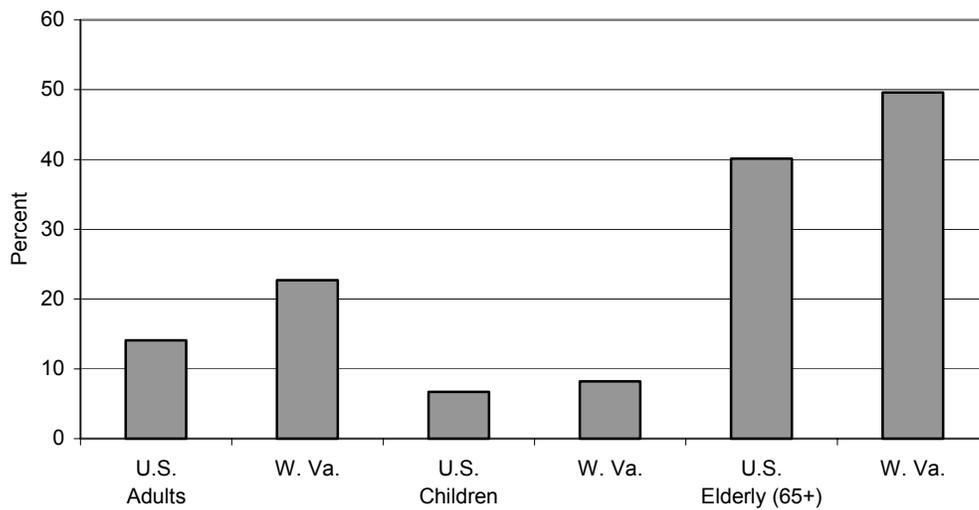
SOURCE: U.S. Department of Commerce, Bureau of the Census, Census 2000 Redistricting Data, Table 5.

**FIGURE 3. Population Below the Poverty Line, Selected West Virginia Counties, 1997**



SOURCE: U.S. Department of Commerce, Bureau of the Census, West Virginia QuickFacts.

**FIGURE 4. Disability Rates, United States and West Virginia, 2000**



SOURCE: U.S. Department of Commerce, Bureau of the Census, Census 2000 Supplemental Survey, Profile of Selected Social Characteristics, 2000.

## Organization of the Report

After this background section, this report consists of six chapters on the following topics:

- ***Police-community relations.*** This chapter documents tensions between the police and citizens, especially racial minorities, and patterns of alleged civil rights violations by police; explores factors that may contribute to police-community tensions; and summarizes ongoing and suggested efforts to address these problems, as set forth by participants in the community forums.
- ***Treatment of racial minorities and people with disabilities in the public schools.*** This chapter looks at the experiences of students and parents who are racial minorities or have disabilities; discusses the small number of minority employees in the schools; and examines concerns about the education of students with disabilities, especially the hearing impaired, within county school systems. The chapter concludes by summarizing some of the efforts to address these problems as well as suggestions for new approaches made by forum participants.
- ***Civil rights issues related to employment.*** This chapter covers discrimination against racial minorities in hiring and welfare-to-work placements, harassment and discrimination against racial minorities in the workplace, and barriers to productive employment for people with disabilities.
- ***Hate crimes.*** The chapter presents background on hate crimes and the state Hate Crime Task Force, focusing on the task force's activities and achievements to date and suggesting areas for strengthening the response to hate crimes.
- ***A climate of intolerance.*** This section briefly looks at bigotry and discrimination against racial minorities in areas of public life not covered in the preceding chapters—for example, discriminatory treatment in stores and restaurants—which contribute to West Virginians' day-to-day experiences of racial intolerance.

- ***Findings and recommendations.*** The final section summarizes findings of the West Virginia Advisory Committee based on testimony from the three forums and additional research, and presents the Committee's recommendations for actions to be taken to address problems outlined in the report.

It is important to recognize that although the focus of the forums was on problems perceived by the panelists and the corresponding challenges for public policy, speakers at all three events mentioned and commended several efforts underway to respond to the problems identified. These included, among others, police-community partnerships, law enforcement training programs, school-based programs, and grassroots community-based initiatives; also described were efforts to pass state legislation, to bring complaints to state and federal civil rights agencies, and to take legal action. It is reasonable to assume that the specific initiatives mentioned by panelists are only a fraction of the efforts underway around the state, drawing on the time, talents, and dedication of West Virginians of all backgrounds who want to improve the civil rights climate in their communities.

Nonetheless, speaker after speaker emphasized the urgent need to do more, in some cases suggesting that frustrations have reached the breaking point. Some called for specific and detailed actions, while others simply indicated what they thought would be a fruitful approach. At times, as well, forum participants expressed anger over past or present injustices without making any specific recommendations, in some cases expressing pessimism that anything will ever be done.

In developing its recommendations, the Advisory Committee sought to give priority to actions viewed both as likely to have a significant impact and as reasonably feasible to carry out; accordingly, the recommendations are both fewer in number and more sharply focused than the wide-ranging suggestions made by forum participants that appear in the body of the report.

## CHAPTER 2

# Police-Community Relations

Troubled police-community relations were a predominant theme of the three community forums, and were particularly emphasized in Charleston and Logan. The seriousness of this problem was earlier documented in the Committee's 1991 and 1993 forums held in Huntington and Logan, where witnesses charged that negative police attitudes toward people of color result in discriminatory law enforcement practices as well as verbal and physical abuse. In its reports following those forums, the Advisory Committee called for the governor to evaluate the need for citizen review boards to oversee police activities.<sup>1</sup> Despite this history of community concern about police conduct and the Advisory Committee's recommendations, testimony by speakers in the 1998, 1999, and 2000 community forums made clear that serious problems persist.

In addition to presenting allegations that police continue to stereotype, discriminate against, and abuse the civil rights of minority citizens, forum participants examined factors contributing to alleged abuses, noted ongoing efforts to respond to these problems, and called for additional actions and new approaches.

### Alleged Civil Rights Violations by Police

The American Civil Liberties Union (ACLU) of West Virginia monitors police activity around the state at the city, county, and state levels. Hilary Chiz, then director of the West Virginia ACLU, said that since monitoring began in the mid-1990s, the organization has received a "staggering" number of complaints about police behavior, ranging from the trivial all the way to

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<sup>1</sup> West Virginia Advisory Committee to the U.S. Commission on Civil Rights, *Rising Racial Tensions in Logan County, West Virginia*, 1995, pp. 26–27, and *Police-Community Relations in Southern West Virginia*, 1993, pp. 30–31.

claims of physical brutality.<sup>2</sup> Many complaints are from poor people, both minority and white. Ms. Chiz noted particularly severe problems in Charleston and Bluefield, cities with larger minority populations than elsewhere in the state.<sup>3</sup>

Drawing on the ACLU findings and on other records and statistics, as well as on their personal experiences, panelists raised three major concerns about police activities:

- Stereotyping of racial minorities, youth, and poor people, leading to harassment.
- Disproportionate stops and arrests of minority citizens, for example, in relation to the youth curfew in Charleston.
- Use of excessive force by police officers, including recent incidents of police brutality that have resulted in severe injuries to citizens.

### Stereotyping of Minorities, Youth, and Poor People

Several panelists said police hold negative stereotypes of racial minority groups, especially African Americans, which leads to harassment; this in turn fuels deep mistrust of the police in minority communities. Tom Rodd, a senior law clerk in the West Virginia Supreme Court, said that because of the "war on drugs" over the last 30 years, poor and racial minority neighborhoods are stereotyped as a "breeding ground for criminal drug addicts," while the police are stereotyped as oppressors of racial minorities and the

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<sup>2</sup> Chiz testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Charleston, WV, Apr. 20, 2000, transcript, pp. 11–12 (hereafter cited as *Charleston Transcript*); and Chiz testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Logan, WV, Nov. 17, 1998, transcript, pp. 58–59 (hereafter cited as *Logan Transcript*).

<sup>3</sup> *Ibid.*

poor.<sup>4</sup> “In this atmosphere of stereotypes, relations between communities and the police are much more difficult and they’re charged with very increased potential for wrongdoing,” he noted.<sup>5</sup>

Relations are especially tense between law enforcement and minority youth. Erica Collier, a student at Roosevelt Junior High School in Charleston, asked the panel:

[Police officers] think all African American teens or African American children do bad things. Does that give them the right to come up to us and ask us questions like what are you doing, what’s your name, where do you live?<sup>6</sup>

Rev. James Murray of the African Methodist Episcopal Church in Charleston, who is also president of the Charleston Police Civil Service Commission, asserted that “the police have the mentality that every black man is a criminal.”<sup>7</sup> He illustrated with a personal experience:

I was calling [a popular pizza restaurant] in the Charleston area, which is a predominantly white community, and I was notified that the [restaurant] drivers don’t deliver to “y’all.” I responded, who exactly is “y’all”? His response was “y’all’s community.” I said well, I happen to live no more than three city blocks from the governor of this state and if you cannot deliver to me, then that means you’re not delivering to the governor.

He said no, no, no, we just don’t deliver to y’all, so I hastily got into my car and arrived at the [restaurant] and asked to see the manager to address the issue. Well, on that particular day I happened to be dressed in a mode that happened to fit, whether the police department will openly admit it or not, the profile of a young male. . . . As I began to describe what had transpired, someone at the [restaurant] phoned the Charleston Police Department, and I’m not exaggerating, in less than two and a half minutes the police arrived in the [restaurant] and did not ask me who I was at the time, grabbed my hands, escorted me out, rolled me to the floor.

I said I cannot believe this. I am a leader in this community. If this would happen to me, what happens to somebody else on the corner?<sup>8</sup>

### **Disproportionate Stops and Arrests**

While cases of police misconduct resulting in physical injury are the ones that receive press coverage, panelists emphasized that day-to-day minor harassment also fuels community tensions with police. Jason Huber, a Charleston attorney who specializes in litigation of police misconduct cases, told the Charleston forum:

In my practice, most of the complaints that I see aren’t very egregious cases where you have deadly force or excessive force used against an individual and they have very serious injuries. I think most of the complaints that Hilary [Chiz] and I both see and also that are reported to the ACLU are your slight harassments of younger individuals and poorer people in poorer neighborhoods, where police officers seem to arbitrarily exert their authority in trying to investigate a crime when they don’t have probable cause . . . or they unfairly stopped somebody . . . under pretext and entrapment.<sup>9</sup>

On December 1, 1997, the Charleston City Council passed a Youth Protection Ordinance that makes it illegal for youth under 18 to be on public property during specified nighttime hours, and authorizes police officers to stop, interrogate, and possibly take into custody young people on the street during the restricted hours.<sup>10</sup> The Charleston Police Department began enforcing the ordinance on June 11, 1999. The ACLU and three teens challenged the curfew law as unconstitutional, but the law was upheld by the West Virginia Supreme Court on July 19, 2000.<sup>11</sup>

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<sup>8</sup> *Ibid.*, pp. 54–55. Although identified in the transcript, the name of the restaurant has been omitted from this report.

<sup>9</sup> Huber testimony, *Charleston Transcript*, p. 21.

<sup>10</sup> The curfew makes it illegal for juveniles under 18 to be on public property from 10 p.m. to 6 a.m. Sunday through Thursday, and from midnight to 6 a.m. Friday and Saturday, unless they are with a parent or guardian or fit one of the other exempt categories provided in the law. See CHARLESTON, W. VA. CODE § 18-17 (2000). The text of the ordinance may be found at <<http://www.charlestonwvpolice.org>>.

<sup>11</sup> *Sale v. Goldman*, 539 S.E.2d (W. Va. 2000). See also ACLU *Newswire*, “West Virginia State Court Rules City Curfew Legal,” July 19, 2000. Under paragraph 11 of the ordinance (18-17-(d)), the chief of police was given unrestricted discretion to issue permits to parents and guardians who indicate

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<sup>4</sup> Rodd testimony, *Charleston Transcript*, p. 111.

<sup>5</sup> *Ibid.*

<sup>6</sup> Collier testimony, *Charleston Transcript*, p. 195.

<sup>7</sup> Murray testimony, *Charleston Transcript*, p. 56.

The ACLU has been concerned that the city may be using the law to target specific population groups and areas of the city. Mr. Huber, the attorney who brought the suit for the ACLU, testified that the curfew—which enables officers to stop someone who is doing nothing more than walking down the sidewalk—“invites discriminatory enforcement.”<sup>12</sup> According to police department statistics cited by Mr. Huber, up to January 31, 2000, there were 67 encounters between police officers and young people in Charleston; of these, 31 percent were of African American youth. Furthermore, 48 percent of the resulting arrests were of African Americans<sup>13</sup>—vastly disproportionate in a city where African Americans make up 15 percent of the population. Mr. Huber concluded:

If you're approached by a police officer and if you're a minority or if you're an African American, you stand a much bigger chance of being arrested than if you're white.<sup>14</sup>

African American adults, including students and professionals, also report that police stop and question them for no apparent reason, and they say that minorities, especially black males, are more likely than whites to be jailed for minor offenses such as pranks.<sup>15</sup>

### **Use of Excessive Force**

Romona Taylor Williams, director of a grassroots community group that serves low-income African Americans, told the Charleston forum:

I live in the East End of Charleston. I often watch police officers jump out on the youth and on men, throw them to the ground, put their feet on their necks, and yank their arms behind their backs to handcuff them. This is not what I've heard; this is

what I see, and this is what we are tired of. We are tired of this abuse.<sup>16</sup>

Citizens in several West Virginia communities have been seriously injured in recent years as a result of encounters with law enforcement. For example, in October 1999 a trooper from the State Police, Welch Detachment, in McDowell County severely beat a young white man, Neal Rose. The trooper resigned and was convicted on federal civil rights charges, and the State Police settled the case for \$1 million.<sup>17</sup> In 2000, the city of Bluefield settled a lawsuit for \$1 million involving the 1998 dragging of a 20-year-old African American man by Bluefield police officers while the man was in custody; he was left paralyzed for life.<sup>18</sup> The U.S. Department of Justice's Criminal Section of the Civil Rights Division closed its investigation of the matter after reviewing information collected by the FBI and concluding that evidence was not sufficient to establish a prosecutable violation of federal civil rights laws. At the forum, Hilary Chiz mentioned a “particularly brutal attack” on a citizen, again a young African American man, by a city police officer in Charleston, and an incident in Huntington the week before the forum in which police shot an African American youth in the back.<sup>19</sup> The last incident was described in more detail by Phil Carter of the Cabell County NAACP:

That young man was trying to get away. He tried to climb the fence because he was afraid, intimidated of the police. He slipped, he came down, here's a policeman coming at him, gun drawn, he is shot, the bullet goes right by his head, enters back here, comes out back here. Shot in the back by accident. . . . We have had continuous patterns and protocol from the Huntington police and criminal justice system of intimidation, incrimination, incarceration, and now attempted assassination.<sup>20</sup>

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a reasonable necessity for his or her child to be in a public place during the curfew. The West Virginia Supreme Court found this section unconstitutional because no meaningful standards were provided to the chief of police by which to exercise this discretion.

<sup>12</sup> Huber testimony, *Charleston Transcript*, p. 23.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, p. 24.

<sup>15</sup> Bankole testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Morgantown, WV, June 14, 1999, transcript, pp. 133–36 (hereafter cited as *Morgantown Transcript*).

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<sup>16</sup> Williams testimony, *Charleston Transcript*, p. 193.

<sup>17</sup> Tom Searls, “Welch Beating Incident Settled for \$1 Million,” *Charleston Gazette*, Mar. 9, 2000.

<sup>18</sup> Bill Archer Thomson, “Bluefield Settles Brutality Suit with Establishment of a \$1 Million Trust,” *Beckley Register-Herald*, June 1, 2000. C.N. Blizzard, chief of police, Bluefield Police Department, attachment to letter to Marc Pentino, Eastern Regional Office, U.S. Commission on Civil Rights, May 8, 2002, in response to affected agency review request.

<sup>19</sup> Chiz testimony, *Charleston Transcript*, p. 13.

<sup>20</sup> Carter testimony, *Charleston Transcript*, p. 51.

People with disabilities are another minority group sometimes ill treated by police, who may not realize that certain behaviors are disability related. Several years ago, a disabled man was arrested by the Charleston police when he was perceived to be drunk and disorderly. According to Ms. Chiz, he was wrestled to the ground, hog-tied, and pepper-sprayed. And while in police custody, he died.<sup>21</sup> Although an internal investigation of the death cleared the police of any wrongdoing, the incident was allegedly triggered by police misconception.

### **Factors Contributing to Police-Community Tensions and Alleged Violations**

Panelists noted three main factors underlying poor police relations with communities of color and perceived police misconduct:

- The overwhelmingly white, male composition of law enforcement agencies, with very low percentages of minority and female officers.
- Inadequate qualifications, training, experience, and compensation of officers.
- Police impunity stemming from the inadequacy of internal and external sanctions.

### **Few Minority and Female Officers**

Panelists at all three forums noted the overwhelming predominance of white males and near absence of minority and female officers throughout West Virginia law enforcement agencies. This was seen as a problem for two reasons: it encourages racist attitudes and behavior among some, although not all, police officers; and it leaves minority citizens, especially youth, without law enforcement role models to whom they can easily relate.

Charleston and Bluefield have markedly higher minority populations than other communities in West Virginia, with 15 percent and nearly 25 percent minorities, respectively. In both cases, there is deep concern with the absence of African Americans in significant roles in the local police departments. As of May 2002, the Bluefield Police Department had four minority officers (one sergeant and three patrolman)

out of 27 sworn members.<sup>22</sup> In Charleston, Rev. Homer Davis of the Charleston NAACP noted that there are currently no African American captains, lieutenants, or sergeants on the city's police force; there are four black corporals.<sup>23</sup> Jerry Riffe, then chief of the Charleston Police Department, confirmed this count but noted that he has promoted several minority officers and intends to promote more.<sup>24</sup> In addition, Rev. Davis said there are only three African American female officers on a force of 135 in Charleston.<sup>25</sup>

Some other towns and counties around the state have no minorities at all in law enforcement. In Fairmont, according to Kay Francis Meade of the Fairmont City Council, there are no black police officers and only one female officer.<sup>26</sup> In Logan County, a civil suit resulted in the hiring and placement of an African American officer with the county sheriff's department. Logan County attorney Joan Hill commented:

It appalls me that it takes court action and agreement by the sheriff's department, and the court, and the prosecuting attorney's office, and private counsel to get an African American placed as a law enforcement officer in Logan County. . . . I believe he is the only African American officer in Logan County.<sup>27</sup>

While there was agreement among panelists regarding the low numbers of minority and female officers, opinions differed as to whether law enforcement agencies in the state are making vigorous efforts to recruit and retain such officers. Several panelists asserted that there is a good-faith effort to recruit minorities, but that various obstacles stand in the way. First Sgt. Steve Cook of the West Virginia State Police, Logan Detachment, explained a recent "very active" effort in which the agency sought out potential minority recruits, although with uncer-

<sup>21</sup> Chiz testimony, *Charleston Transcript*, pp. 214–15.

<sup>22</sup> C.N. Blizzard, chief of police, Bluefield Police Department, attachment to letter to Marc Pentino, Eastern Regional Office, U.S. Commission on Civil Rights, May 8, 2002, in response to affected agency review request. Unless otherwise noted, data on the composition of the various law enforcement agencies mentioned are current as of the dates of the forums at which the information was presented.

<sup>23</sup> Davis testimony, *Charleston Transcript*, pp. 15–16.

<sup>24</sup> Riffe testimony, *Charleston Transcript*, p. 122.

<sup>25</sup> Davis testimony, *Charleston Transcript*, p. 16.

<sup>26</sup> Meade testimony, *Morgantown Transcript*, p. 179.

<sup>27</sup> Hill testimony, *Logan Transcript*, p. 30.

tain results.<sup>28</sup> Chief Riffe of Charleston said the goal is to have a force “that’s someplace close to representative of what our communities are,” but that civil service laws make that “virtually impossible.”<sup>29</sup> This view is consistent with findings of the West Virginia Advisory Committee in its 1993 report on police-community relations in southern West Virginia, which noted that hiring and promotion procedures for law enforcement officers are governed by state law and dictated by civil service regulations that are “at times unrealistic, rigid, and not uniformly implemented,” especially in regard to the civil service examination, which is “of questionable validity.”<sup>30</sup>

Chief Riffe and several other panelists also emphasized that low pay makes it difficult to attract and retain African American officers. Eddie St. Clair, vice president of the West Virginia Troopers Association, asked:

What do I tell that young black trooper who is in let’s say Morgantown [and] knows that he can go five minutes across the border in Pennsylvania and get a \$14,000 to \$15,000 pay raise?<sup>31</sup>

Other panelists, however, argued that recruitment efforts have been halfhearted at best. Hilary Chiz of the ACLU commented, “If minority recruitment were, in fact, a serious commitment from the State Police, from county sheriffs or local police forces, I think we would see some results.”<sup>32</sup> Rev. Homer Davis of the Charleston NAACP said the 13 police officers hired by the city of Charleston in the preceding year had included no blacks and no women.<sup>33</sup> “That’s not serious recruitment and let’s not fool ourselves,” he said.<sup>34</sup> Dallas Staples, former police chief of Charleston and current president of West Virginia Black Law Enforcement Officers United, affirmed that outdated civil service laws are a problem, and said that the laws can be “manipulated to exclude people” and that agencies hide

behind the laws and are reluctant to reexamine them.<sup>35</sup>

Rev. James Murray, president of Charleston Police Civil Service Commission, charged that past procedures in Charleston, particularly biased testing, had been “specifically designed to eliminate black involvement in the police force.”<sup>36</sup> The city had a consent decree to ensure that there were minorities on the police force, but it is no longer in place, and black hiring has slowed to a trickle.<sup>37</sup> “There is an institutionalized racism that exists in this city, in this region,” Rev. Murray stated.<sup>38</sup>

Several panelists pointed to the failure to promote minority officers through the ranks as a key factor that discourages blacks from seeking or continuing law enforcement careers. Sherwood Brown of the Raleigh County NAACP said young African Americans in Beckley do not want to take the civil service exam because “they see what those black officers already on the force go through to try to maintain their jobs—the harassment, the denial of promotions.”<sup>39</sup> He stated:

The two 30-year [black] police officers with the Beckley P.D., I think the highest rank they’ve had was sergeant. They’ve had Anglo-Saxon police officers come on and in four years outrank them. [Another black officer has] been on the department for 25 years; in fact he’s ready to retire. He was in the position as chief of detectives, but they would not promote him to lieutenant. . . . It seems to be a fact that . . . Anglo-Saxon police officers do not want to be supervised by blacks, therefore black officers have very few chances of even getting any promotions.<sup>40</sup>

Dallas Staples emphasized that promotion is more important than pay in retention of black officers:

A lot of those African American police officers left those departments because of the environment that they were expected to survive in. There was no upward mobility. Why would you stay somewhere

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<sup>28</sup> Cook testimony, *Logan Transcript*, pp. 52–53.

<sup>29</sup> Riffe testimony, *Charleston Transcript*, p. 118.

<sup>30</sup> West Virginia Advisory Committee, *Police-Community Relations in Southern West Virginia*, p. 30.

<sup>31</sup> St. Clair testimony, *Charleston Transcript*, p. 150.

<sup>32</sup> Chiz testimony, *Logan Transcript*, p. 65.

<sup>33</sup> Davis testimony, *Charleston Transcript*, pp. 74–75.

<sup>34</sup> *Ibid.*, p. 137.

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<sup>35</sup> Staples testimony, *Charleston Transcript*, p. 37.

<sup>36</sup> Murray testimony, *Charleston Transcript*, p. 57.

<sup>37</sup> *Ibid.*, p. 58.

<sup>38</sup> *Ibid.*

<sup>39</sup> Brown testimony, *Charleston Transcript*, p. 17.

<sup>40</sup> *Ibid.*, p. 18.

where you were going to be bogged down? . . . It is not a money issue.<sup>41</sup>

### ***Inadequate Qualifications, Training, Experience, and Compensation of Officers***

In considering causes of poor police-community relations, panelists also raised questions about the qualifications, training, experience, and pay of West Virginia officers across the board. Several suggested that declining educational standards are a problem: the State Police now requires only a high school diploma before a recruit enters training, whereas previously two years of college were required. Most local police forces in the state apparently also require only high school. Tim Tweed, a Logan County citizen, told the forum:

They've hired many officers who do not have the education. . . . A lot of the racial problem we're having, I think, is due to a lack of education—formal education and also racial education.<sup>42</sup>

In response, First Sgt. Cook with the West Virginia State Police said years of experience and common sense are more important than formal education in good policing. Yet several panelists also expressed concern about the large number of relatively young and inexperienced officers. The State Police no longer hires 18-year-olds, but many local police forces do. Attorney Joan Hill, a public defender in Logan County, said in her experience most cases of arresting officers beating or injuring suspects involve very young law enforcement officers.<sup>43</sup> Eddie St. Clair of the Troopers Association said that seniority among state troopers has dropped by half since 1982 and that “there is an inherent vulnerability with that inexperience.”<sup>44</sup> Referring to the publicized case of police brutality in Welch in 1999, he told the Charleston forum:

When you have incidents like the Welch incident where a police officer who had only been off probation a couple months, been on his own a couple months, can do more damage in 30 minutes than I

could ever fix if I had a stellar career for 30 years, I take exception to that and I want to know what we can do to prevent that.<sup>45</sup>

There was general agreement that low pay is directly linked to low educational levels among recruits. Mr. St. Clair said:

There are 50 states in this union and the West Virginia State Police are dead last in pay. Charleston P.D. is in the same boat. How do we go to . . . those high-caliber candidates that we're looking for, the ones with the criminal justice degrees, . . . and say we'd like for you to come to the West Virginia State Police, but we're 27 percent behind the regional average in pay?<sup>46</sup>

Captain Steve Cogar, then director of training at the West Virginia State Police Academy, said small communities paying minimum wage to officers cannot set the educational bar very high.<sup>47</sup> It is difficult to tell someone that “you have to have a two- or a four-year college degree to come and get this minimum-wage job,” he noted.<sup>48</sup>

Several panelists said that testing and training of officers do not place enough emphasis on “people skills” and that officers on the job often do not know the communities they serve. Captain Cogar confirmed that training at the academy emphasizes defensive tactics designed to protect the lives of officers on the street, but he said that diversity training and ethics training are part of the program.<sup>49</sup> “We are a predominantly white male police force and have been for years, so we know that we need to raise the awareness in these areas.”<sup>50</sup> He said the curriculum, largely state mandated, is under review.<sup>51</sup>

Dallas Staples, the former police chief, said if recruits lacking interpersonal skills are hired, “it's a gamble” that training would be able to make up for that.<sup>52</sup> He noted that “people with strong interpersonal skills that are able to communicate with the community” might be at a

<sup>41</sup> Staples testimony, *Charleston Transcript*, p. 164. Because of a transcription error, Mr. Staples is cited in this portion of the transcript as “Unknown.”

<sup>42</sup> Tweed testimony, *Logan Transcript*, p. 80.

<sup>43</sup> Hill testimony, *Logan Transcript*, p. 32.

<sup>44</sup> St. Clair testimony, *Charleston Transcript*, p. 154.

<sup>45</sup> *Ibid.*, pp. 150–51.

<sup>46</sup> *Ibid.*, p. 152.

<sup>47</sup> Cogar testimony, *Charleston Transcript*, p. 134.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, pp. 104–05.

<sup>50</sup> *Ibid.*, p. 105.

<sup>51</sup> *Ibid.*, pp. 103–05.

<sup>52</sup> Staples testimony, *Charleston Transcript*, p. 87.

disadvantage in the promotion process because the written examination does not measure people skills.<sup>53</sup>

Parkersburg bail bondsman Polly Rempel said police officers in her county stay in their cars and “do not have contact with people until they see something that they think is probable cause.”<sup>54</sup> She asked, “If you don’t deal with people, how do you understand people? You can’t teach it in a book.”<sup>55</sup>

### ***Police Impunity Stemming from Inadequacy of Internal and External Sanctions***

Panelists noted the lack of effective sanctions for police misconduct as a cause of poor police relations with minority communities. This in turn hinges on three factors: ineffective internal discipline, absence of meaningful citizen review, and difficulty in prosecuting officers for alleged abuses.

***Ineffective internal discipline.*** Jerry Riffe, then chief of the Charleston Police Department, said that an internal police review board that used to merely advise chiefs on discipline matters has been given legislative authority to make binding decisions, and that this change has deprived chiefs of the disciplinary authority they need.<sup>56</sup> Chief Riffe said, “The state of West Virginia has virtually rendered me helpless in disciplining my own people. . . . I don’t have the power to fire, I don’t have the power to reprimand, and I don’t even have the power to transfer someone from one shift to another.”<sup>57</sup>

A related problem is that when officers are fired from a particular force, they do not lose their certification, and can get jobs on another community’s police force. Captain R.E. Wilson of Parkersburg reported that small towns, unable to afford sending their own recruits to the state police academy, frequently hire academy graduates who have failed probation with larger city police departments;<sup>58</sup> this practice was reported to be widespread. Hilary Chiz said the ACLU knows of

State Police officers who are no longer troopers for various reasons related to discipline, and who are now working for city police departments.<sup>59</sup>

***Absence of meaningful citizen review.*** Following the 1991 forum in Huntington that examined police-community relations in southern West Virginia, the West Virginia Advisory Committee found that “the complaint systems now in place are not capable of handling the corruption, beatings, and misconduct. . . . Thus some form of outside review, including a civilian review board, must be established for investigating complaints against police.”<sup>60</sup> By the end of the decade, only two West Virginia cities, Charleston and Bluefield, had instituted citizen review boards; both boards were formed in the last couple of years in response to rising police-community tensions in those communities. Neither board has enforcement authority or subpoena authority, however. Attorney Jason Huber stated:

If you do not have subpoena power, [then] civil reviews, independent reviews, are meaningless. If you cannot compel somebody to come before you and give testimony under penalty of perjury, make findings of fact, make conclusions of law, and make recommendations, then civil review is absolutely hollow.<sup>61</sup>

He noted that other jurisdictions around the country have determined that citizens have an absolute right, under the Public Records Law and the Freedom of Information Act, to review complaints against police officers.<sup>62</sup> West Virginia state law specifically provides that police forces are subject to civilian authority.<sup>63</sup>

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<sup>59</sup> Chiz testimony, *Charleston Transcript*, p. 141.

<sup>60</sup> West Virginia Advisory Committee, *Police-Community Relations in Southern West Virginia*, p. 30.

<sup>61</sup> Huber testimony, *Charleston Transcript*, pp. 25–26.

<sup>62</sup> *Ibid.*, p. 73.

<sup>63</sup> William M. Oliver, “Are Citizen Review Boards Right for West Virginia?” *West Virginia Public Affairs Reporter*, vol. 10, no. 2 (Spring 2001), Institute for Public Affairs, West Virginia University. The article cites West Virginia law, which provides that “every municipality shall have plenary power and authority to protect persons and property within the municipality and preserve law and order therein and, for this purpose, to provide for, establish, equip and maintain a police force or department. The police force shall be subject to the authority, control and discipline of the administrative authority.” W. VA. CODE § 8-14-1 (2001).

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<sup>53</sup> *Ibid.*, pp. 87–88.

<sup>54</sup> Rempel testimony, *Charleston Transcript*, pp. 84–85. Because of a transcription error, Ms. Rempel is cited as “Unknown” in the Charleston transcript.

<sup>55</sup> *Ibid.*

<sup>56</sup> Riffe testimony, *Charleston Transcript*, p. 124.

<sup>57</sup> *Ibid.*

<sup>58</sup> R.E. Wilson testimony, *Charleston Transcript*, p. 138.

In 1999 and 2000 the three African American delegates in the state legislature, together with three white delegates, sponsored a bill to establish a citizen review board for the West Virginia State Police, but the bill never made it out of subcommittee. Delegate Arley Johnson (D-Cabell), one of the co-sponsors, told the Charleston forum that law enforcement agencies had mounted a massive lobbying effort to derail the legislation:

From the State Police to the lowest city police department in the state, they are in mass at all of those meetings and they are trying to convince the legislature that they do not need a review board.<sup>64</sup>

Although the board would have heard only complaints against the State Police, several citizen groups and leading newspapers also called for establishment of a statewide citizen review board for all police personnel in the state.<sup>65</sup> Proposals to establish citizen review boards have been controversial in West Virginia, as in other states, and that debate was reflected in the Charleston and Logan forums. Dallas Staples, the former Charleston police chief, said he would have welcomed a citizen review board during his time as chief:

Police agencies, not only in West Virginia but throughout the nation, if we are to rise to the professional level that we profess, we should welcome review because we can only correct [problems] when they are identified. . . . Sometimes you're too close to it to see what's really going on.<sup>66</sup>

On the other hand, Eddie St. Clair of the West Virginia Troopers Association confirmed that his organization had strongly opposed the proposal for citizen review.<sup>67</sup> First, he said, a citizen review board can do nothing to prevent incidents of brutality, but is only "one more group after it happened to point a finger."<sup>68</sup> Second, when a complaint of misconduct is brought against an officer, it already triggers investiga-

tions at multiple levels, several of which involve civilian juries. Third, Mr. St. Clair emphasized the belief among officers that citizens cannot fairly judge police actions because they do not understand what it is like to be an officer confronting someone who may be armed and dangerous:

I can tell you as a police officer the one thing that we fear most is a rush to judgment. . . . Police officers have to make decisions in a split second that are going to be viewed sometimes very quickly by a community as the wrong decision. And it's so important for us that in the court system, where the totality of the circumstances are looked at, that's where we be judged.<sup>69</sup>

***Difficulty in prosecuting officers for alleged abuses.*** Finally, several panelists pointed out barriers to successfully prosecuting cases of alleged police misconduct. Rev. Michael Pollard, a pastor and social worker in Logan County, expressed frustration that lawbreaking officers often are subjected only to internal sanctions when criminal prosecution would be more appropriate:

We see these incidents happen, and then we hear later that this officer has been placed on administrative leave without pay, and then maybe later he was allowed to resign or he was dismissed, but we get the impression sometimes that because it was an officer in uniform, well, we'll just let him resign and he won't be a policeman in this county again. . . . I'm a pastor. . . . I could have on my Sunday robe and beat one of my church members half to death, they're going to do more than allow me to resign. Somebody's going to take criminal action against me. . . . I just want to know, when are our officers of the law held accountable for criminal actions?<sup>70</sup>

Chuck Miller with the U.S. attorney's office in Charleston said law enforcement officers accused of civil rights violations are "very difficult to convict," not only in West Virginia but also nationwide.<sup>71</sup> Two contributing factors were highlighted: complaints of violations often are not pursued, and abuses by police officers are difficult to prove in court.

Allegations of officer abuse often are withdrawn before charges can be filed. Victims of excessive force are frequently people in police

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<sup>64</sup> Johnson testimony, *Charleston Transcript*, p. 66. Because of a transcription error, Delegate Arley Johnson is cited as "Delegate Howard Johnson" in the Charleston transcript.

<sup>65</sup> Oliver, "Are Citizen Review Boards Right for West Virginia?"

<sup>66</sup> Staples testimony, *Charleston Transcript*, p. 65.

<sup>67</sup> St. Clair testimony, *Charleston Transcript*, pp. 154–57.

<sup>68</sup> *Ibid.*, p. 155.

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<sup>69</sup> *Ibid.*, pp. 157–58.

<sup>70</sup> Pollard testimony, *Logan Transcript*, pp. 150–51.

<sup>71</sup> Miller testimony, *Charleston Transcript*, pp. 98–100.

custody, facing charges in connection with the original incident as well as, sometimes, charges of resisting arrest; they may fear retaliation if they bring countercharges of use of excessive force. It is also extremely difficult to find attorneys willing to represent them on these countercharges.<sup>72</sup> Attorney Joan Hill, a public defender in Logan County, said she has represented many defendants who have been injured during their arrest; often charges of obstructing an officer or resisting arrest will be dropped in exchange for the defendant's agreement not to pursue countercharges of use of excessive force against the arresting officer or agency.<sup>73</sup>

When allegations of brutality do wind up in court, the victims are frequently people with criminal records who do not make good witnesses. Hilary Chiz of the ACLU noted:

Typically, in all areas of law enforcement, when you put someone on the stand claiming the use of excessive force . . . it becomes a he-said, she-said, their word against ours kind of situation. And it's very difficult for a hearing official or a jury to look at two detectives [or state troopers] who are neatly dressed, very polite, and by virtue of their presence command authority when they are on a stand—versus someone whose record is not particularly sparkling and whose record is brought up continually. So, it's very difficult to prove use of excessive force.<sup>74</sup>

Also a factor in this courtroom scenario is the common refusal of police witnesses to testify against a fellow officer—the so-called wall of silence. Delegate Arley Johnson stated:

Most of the [officers] you meet are decent, honorable human beings, but they're fully aware of that 1, 2, 3 or 4 or 5 percent of their ranks that are not. But the last thing that any police officer would ever do is to rat on another officer. That is the unwritten code.<sup>75</sup>

Chief Jerry Riffe of Charleston acknowledged that a wall of silence exists in the police department, but he said that a similar wall exists in

minority communities, where witnesses often will not tell police who committed a crime.<sup>76</sup>

Reflecting on the recent publicized incidents of civil rights violations by police, several panelists expressed anger at the apparent sense of impunity among law enforcement agencies. Delegate Johnson told the Charleston forum:

Whether they're in the Northern, Eastern Panhandle, whether they're in Welch, whether they're in Huntington, whether they're Charleston, the police agencies in this state have run amok. They feel no intimidation and they fear no retribution for anything they do and when they close ranks, there's not a stronger fence anywhere in this state and I think that's unfortunate.<sup>77</sup>

## Suggested Strategies and Ongoing Efforts

Panelists at the three forums suggested numerous measures to improve police-community relations, and some also mentioned efforts underway or planned, in the following areas.

### *Improve Police Recruitment and Hiring*

Key measures suggested by speakers included fair testing and hiring procedures free of bias against minority candidates, an emphasis on recruits' interpersonal skills, and active outreach to minorities. Dallas Staples of the West Virginia Black Law Enforcement Officers United and other panelists said the civil service regulations that currently circumscribe hiring should be revisited. Mr. Staples added, "The testing questions should draw out those people that have the types of things that you want in police officers and then you can build [on that] with good, strong training in sensitivity."<sup>78</sup> He emphasized that minority recruitment can only succeed if it is an ongoing process "woven into the philosophy of the organization" and if efforts are made to create a work environment that minority officers will want to participate in.<sup>79</sup> Rev. James Murray, president of the Charleston Police Civil Service Commission, mentioned that the commission has purchased an unbiased test for use with both entry and promotion candi-

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<sup>72</sup> Public defenders are prohibited by law from representing defendants on countercharges of use of excessive force. Chiz testimony, *Logan Transcript*, pp. 15–17.

<sup>73</sup> Hill testimony, *Logan Transcript*, pp. 35–36.

<sup>74</sup> Chiz testimony, *Logan Transcript*, pp. 20–21.

<sup>75</sup> Johnson testimony, *Charleston Transcript*, p. 67.

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<sup>76</sup> Riffe testimony, *Charleston Transcript*, pp. 128–29.

<sup>77</sup> Johnson testimony, *Charleston Transcript*, pp. 66–67.

<sup>78</sup> Staples testimony, *Charleston Transcript*, p. 88.

<sup>79</sup> *Ibid.*, pp. 36–37, 88.

dates and hopes it will increase the number of minorities hired.<sup>80</sup>

### ***Increase Age and Educational Requirements for Recruits, and Raise Officer Pay***

Attorney Jason Huber summed up this view:

Police officers have got to be paid more money, especially municipal police officers. They have a very difficult job, there's no doubt about it. They have got to be paid more money, but the opposite side of that is they have got to be better educated and they have to have a higher degree of professionalism, and I think one big factor in that is increasing the age requirement.<sup>81</sup>

### ***Increase Diversity Training for Officers***

Captain Steve Cogar, then director of training at the West Virginia State Police Academy, said a complete curriculum review would be launched in the summer of 2000 in conjunction with the criminal justice program at West Virginia State College, with an eye toward making recommendations to the Law Enforcement Training Subcommittee of the Governor's Committee on Crime, Delinquency, and Correction, which mandates the curriculum.<sup>82</sup> He said the general movement in the academy is away from classroom lectures and toward scenario-based interactive training that teaches officers how to deal with people. Diversity training and ethics training are ongoing, including a program called Critical Focus that helps officers learn to deal with people with disabilities.<sup>83</sup>

Several panelists said in-service diversity and sensitivity training should be made ongoing and mandatory for officers on the job, perhaps

tied to promotion. Chief Riffe said Charleston has done such training in the past and will do it again.<sup>84</sup>

### ***Broaden the Criteria for Promotion***

Panelists called for law enforcement agencies to reward officers with good interpersonal and communication skills who show the ability to interact with citizens of all backgrounds. They cited efforts in the state legislature to broaden promotion criteria beyond mere test scores to include other information such as an officer's communication skills and record of dealing with people of diverse backgrounds, but the legislation went nowhere; it was suggested that renewed efforts be made. Such broader criteria, if adopted, would be a major step toward efforts to promote more qualified minority officers.

### ***Strengthen Internal Discipline and Sanctions***

Several panelists, including the current and former Charleston police chiefs, stressed that most officers are honorable but that there are "bad apples" who need to be eliminated from the ranks through appropriate internal discipline and sanctions. Measures to achieve this would include strengthening the authority of police chiefs to discipline their officers and ensuring that officers fired for misconduct lose their law enforcement certification so they cannot be rehired by other police departments. Chief Riffe mentioned that there is some movement in the direction of stripping fired officers of their certification.<sup>85</sup>

### ***Establish External Oversight Through Citizen Review Boards***

The ACLU is among a number of organizations in the state advocating the creation of citizen review boards, preferably with subpoena and enforcement authority, in every community over a certain size. Delegate Arley Johnson said he hopes the bill to establish a review board for the West Virginia State Police would be introduced again in the legislature.<sup>86</sup>

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<sup>80</sup> Murray testimony, *Charleston Transcript*, p. 81.

<sup>81</sup> Huber testimony, *Charleston Transcript*, p. 25.

<sup>82</sup> Cogar testimony, *Charleston Transcript*, pp. 103–04.

<sup>83</sup> *Ibid.*, pp. 103–06. Captain Cogar recently informed the Committee that the West Virginia State Police Academy received grant funding through the Violence Against Women Act to create a training facility to teach problem solving through role playing, coaching, and videotape review. With a focus on domestic violence scenarios, the program is designed to teach officers to interact with diverse populations by using role players representing diverse ethnic groups, people with disabilities, and relationships with multiple sexual preferences. Stephen Cogar, Steptoe & Johnson, letter to Marc Pentino, Eastern Regional Office, U.S. Commission on Civil Rights, Feb. 25, 2002, in response to affected agency review request.

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<sup>84</sup> Riffe testimony, *Charleston Transcript*, p. 125.

<sup>85</sup> *Ibid.*, p. 141.

<sup>86</sup> Johnson testimony, *Charleston Transcript*, p. 44.

There have been some advances in citizen monitoring. The Charleston Police Department, which previously had no systematic way of tracking complaints of police misconduct, has created an up-to-date database as a result of litigation by the ACLU. The database identifies each officer by anonymous number, records each complaint, and records the disposition of the complaint.<sup>87</sup> However, litigation seeking to make this information subject to public disclosure under the Freedom of Information Act was rejected by the West Virginia Supreme Court in May 2001.<sup>88</sup>

### ***Bring Police and Citizens into Contact Outside the Law Enforcement Setting***

Various formal and informal programs are underway around the state with the goal of increasing contact and building trust between police and citizens, especially minorities. In Huntington, for example, the police department established and attends 12 monthly community meetings around the city, encouraging citizens to convey their concerns and complaints directly to the police.<sup>89</sup> In Charleston, Romona Taylor Williams mentioned that the grassroots organization she heads, REDEEM, works closely with the city police department on a youth initiative.<sup>90</sup> The State Police is involved in a number of community initiatives, some under the federally funded COPS (Community Oriented Policing Services) program. Pete Kelly of the Logan County Community Action Group and Youth of the NAACP told the Logan forum:

Sgt. [G.R.] Johnson and the West Virginia State Police have helped in our community greatly. They took some of the kids out of some of the communities to ballgames in Charleston. They donated money to some of the organizations in our community. They've done a great job trying to come into the communities and let people know that they're

not there to just arrest people, but they're there to protect people. . . . And I just wanted to let them know that we appreciate them very much for what they've done in our community.<sup>91</sup>

Yet it appears that such programs are not always sustained or successful. For example, attorney Joan Hill stated:

I also recall the Community Cooperative Program that was set up with sheriffs' departments, law enforcement, community leaders, and in fact a partner of mine was on a committee that worked to establish better relations with law enforcement and other police and prosecutors' offices. I guess I lack the memory to figure out whatever happened to that group or to that organization, because it went very gung ho for about six or eight months, maybe even up to a year. But after some period of time it simply fell apart.<sup>92</sup>

Attorney Jason Huber stressed that the solution is, ultimately, political and depends on organization at the community level:

The best thing that people can do if they are concerned about police misconduct, who really want increased community relations with police officers, is organize. Get out in the street and organize, because lawsuits and litigation are meaningless without the movement behind them that supports the goals and if they don't work together, they'll be ineffective.<sup>93</sup>

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<sup>87</sup> Huber testimony, *Charleston Transcript*, p. 27.

<sup>88</sup> *Manns v. City of Charleston Police Dep't*, 550 S.E.2d 598 (W. Va. 2001). See also Lawrence Messina, "Court Rejects FOIA Request; Release of Police Complaints Would Be 'Invasion of Privacy,'" *Charleston Gazette*, May 17, 2001.

<sup>89</sup> Lt. Mike Davis, Planning and Research Division, Huntington Police Department, letter to Marc Pentino, Eastern Regional Office, U.S. Commission on Civil Rights, June 11, 2002, in response to affected agency review request.

<sup>90</sup> Williams testimony, *Charleston Transcript*, p. 198.

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<sup>91</sup> Kelly testimony, *Logan Transcript*, pp. 83–84.

<sup>92</sup> Hill testimony, *Logan Transcript*, pp. 29–30.

<sup>93</sup> Huber testimony, *Charleston Transcript*, p. 28.

## Treatment of Racial Minorities and People with Disabilities in the Public Schools

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When addressing education and civil rights, panelists at the forums highlighted two major areas: (1) harassment and discrimination against racial minorities in public schools and universities, and (2) barriers to educational opportunities for people with disabilities, especially the hearing impaired. The focus in both cases was on elementary-secondary schools, although problems at the university level were discussed briefly. In addition to outlining problems, participants mentioned a number of ongoing efforts and initiatives in the schools and called for stronger proactive measures.

### Discrimination Against Racial Minorities in Schools and Universities

Speakers raised four major concerns about the experiences of racial minorities in West Virginia schools and universities:

- Harassment and violence against minority students by their peers, and schools' failure to respond consistently.
- Educators' low expectations of, and lack of support for, minority student achievement.
- School systems' failure to recruit and hire significant numbers of minority professionals, resulting in a lack of minority role models for students.
- A "double standard" for minority students in the university setting.

### Peer Harassment and Violence Against Minority Students

In December 1996, the West Virginia Department of Education adopted comprehensive regulations to prevent and respond to harass-

ment and violence in schools, known as Policy 2421.<sup>1</sup> Noting that harassment against students seemed to be increasing, the regulations, which the state Human Rights Commission and the Hate Crime Task Force helped to draft, require each county board of education to develop a plan for responding to harassment that includes mechanisms for reporting and investigating incidents as well as penalties for violations. In addition, each school board must develop an education program for students to foster an attitude of understanding and acceptance of individuals from a variety of cultural, ethnic, racial, and religious backgrounds.

Over the past few years, some steps have been taken toward developing the kinds of programs called for by Policy 2421. Especially noteworthy is the West Virginia Civil Rights Team Project, launched in 1999 by the Civil Rights Division of the West Virginia Attorney General's Office. This pilot program in 12 high schools and middle schools trains teams of students to lead violence prevention activities and creates mechanisms for students to report harassment before it escalates to violence.<sup>2</sup>

Nonetheless, implementation of the 1996 policy is far from complete, and organizations in the state continue to receive many complaints of in-school harassment. Rick Wilson, a staff member of the American Friends Service Committee, said that in just the three weeks before the Logan forum, his office received three separate

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<sup>1</sup> See W. VA. CODE ST. R. §§ 126-18-1–126-18-13 (1997).

<sup>2</sup> See West Virginia Office of the Attorney General, *1999–2000 Civil Rights Team Project: Fall Training Manual*, June 2000. See also McGraw testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Charleston, WV, Apr. 20, 2000, transcript, pp. 90–94 (hereafter cited as *Charleston Transcript*).

reports of racial harassment and fighting in schools around West Virginia.<sup>3</sup> He said that the issue of violence and prejudice in the school system is “very serious and widespread” and that schools typically respond ineffectively:

In schools where these incidents happen there’s a tendency to deny all this. I don’t know how many times I’ve heard, “We don’t have a problem here.” Once it gets past the denial [stage] the tendency is to use what I call the pixie dust solution, which is to do some kind of brief program and say, “There, we’ve taken care of that,” and move on.<sup>4</sup>

Mr. Wilson agreed that adoption of the Board of Education’s Policy 2421 is a big step forward, but he questioned whether awareness of the regulations had trickled down to the local schools and noted, “I’m not sure how much teeth this rule has.”<sup>5</sup>

In the absence of consistent, coordinated responses mandated by school systems, much depends on the responses of individual teachers and school administrators when problems arise. In some cases, these responses involve positive action. Katherine Bankole, director of the Center for Black Culture and Research at West Virginia University, told the Morgantown forum of her daughter’s experience with racial taunting:

The first couple of days she went to school she came home crying. She was about 6 years, 6 going on 7, and she said that the reason she was crying was because the children—who were all white, she was the only black child—were spitting on her because she was African and told her she was a dirty African. And my daughter is West African, so that was very traumatizing for us. . . . We asked the teacher to handle it, and thank goodness we had a teacher who understood that you needed to handle these issues quickly and expediently or they can escalate out of control.<sup>6</sup>

In other cases, complaints have been met with inaction and denial. Debbie Hall, president

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<sup>3</sup> Rick Wilson testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Logan, WV, Nov. 17, 1998, transcript, pp. 88–89 (hereafter cited as *Logan Transcript*).

<sup>4</sup> *Ibid.*, pp. 89–90.

<sup>5</sup> *Ibid.*, p. 90.

<sup>6</sup> Bankole testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Morgantown, WV, June 14, 1999, transcript, p. 141 (hereafter cited as *Morgantown Transcript*).

of the Morgantown NAACP, reported that the NAACP had received complaints of students being called the “N” word at school.<sup>7</sup> One parent who was concerned about language directed toward her children contacted the school with her concerns “and was told by the assistant principal that they are just words.”<sup>8</sup>

Educators in the Logan and Mingo county school systems mentioned several ongoing programs, including those under the federally funded School-to-Work program,<sup>9</sup> that contain components aimed at encouraging positive attitudes toward diversity. These include Harmony Week in high schools and middle schools and the CERES program at the K–6 level.<sup>10</sup> On the other hand, attorney Joan Hill, who has a child in the Logan County schools, suggested that existing racial sensitivity programs for younger students are insufficient: “My son is 9 years old and a weeklong program on Martin Luther King is not going to get it.”<sup>11</sup> She emphasized that serious diversity training needs to begin before high school:

I think [racial sensitivity training] needs to begin at a much younger age because once racial issues and sensitivity issues are presented to students, more likely in high school programs, their mindset on racial issues . . . is already so deeply borne in their head that whatever they hear . . . probably goes unheeded.<sup>12</sup>

### **Low Expectations for Minority Student Achievement**

Several panelists said some teachers and administrators set low expectations for minority students’ academic achievement and fail to support and encourage them to succeed. Eliza Jane Dillard, a retired teacher from Logan County, said minority and poor students are overlooked and “put down”:

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<sup>7</sup> Hall testimony, *Morgantown Transcript*, pp. 122–23. Ms. Hall’s written testimony was read to the Morgantown forum by Delegate Charlene Marshall of the West Virginia House of Delegates.

<sup>8</sup> *Ibid.*

<sup>9</sup> The School-to-Work program under the School-to-Work Opportunities Act of 1994 ended in October 2001. See National School-to-Work Learning Center, <www.stw.ed.gov>.

<sup>10</sup> White testimony, *Logan Transcript*, pp. 99–102; Fletcher testimony, *Logan Transcript*, pp. 102–03.

<sup>11</sup> Hill testimony, *Logan Transcript*, p. 28.

<sup>12</sup> *Ibid.*, pp. 27–28.

They aren't getting a fair and equal chance. And not only are the minority children being overlooked, but the poor whites are also. . . . They're not encouraged to go to college. They're made to feel as if they can't do anything but maybe cook and wash out or clean hotels, or maybe sweep.<sup>13</sup>

Barry Bowe, principal of Chandler Elementary School in Charleston, which serves a low-income student population, said, "Many politicians, educational administrators, parents, and even teachers have very low expectations for poor children, especially poor children with yellow, brown, or black skin."<sup>14</sup> He detailed his school's efforts to ensure that every student "is treated with respect and is permitted and expected to achieve."<sup>15</sup>

Several educators currently in the Logan and Mingo county school systems described programs underway to help all students set and reach high goals. Wilma Zigmund, principal of Logan High School, underscored her school's commitment to equity: "We try not to look at color, or financial status or political status. We really try to be fair with all of our students."<sup>16</sup> She mentioned a problem-solving program created specifically for African American female students, and now open to all students, run by an African American professional who volunteers her time.<sup>17</sup> Both Logan and Mingo counties also have the Advisor-Advisee program in their high schools and middle schools, which brings small groups of students into a close personal relationship with a faculty member who provides academic and career guidance.<sup>18</sup>

Rev. Michael Pollard, an African American pastor and social worker, said some teachers openly display negative attitudes toward minorities:

I have had students from my church who have gone through the lower school system and have said that teachers or administrators at the school have made joking remarks about their African American heritage, which they felt to be belittling, but didn't feel like they knew who to go to. . . .

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<sup>13</sup> Dillard testimony, *Logan Transcript*, pp. 129–31.

<sup>14</sup> Bowe testimony, *Charleston Transcript*, p. 183.

<sup>15</sup> *Ibid.*, pp. 183–85.

<sup>16</sup> Zigmund testimony, *Logan Transcript*, p. 94.

<sup>17</sup> *Ibid.*, pp. 94, 96–97.

<sup>18</sup> Fletcher testimony, *Logan Transcript*, pp. 103–08; Zigmund testimony, *Logan Transcript*, pp. 116–20.

They don't feel as though they have advocates within the school system.<sup>19</sup>

At the same time, Rev. Pollard noted that some teachers are sensitive to racial issues. His own son's teacher asked the Pollards' advice on whether a particular book that contained racial stereotypes was appropriate for the elementary classroom; when they said no, the teacher opted not to use the book.<sup>20</sup>

### ***Failure to Recruit and Hire Minority Professionals***

The question of whether minority children have advocates and role models in the schools turns in part on the issue of minority representation among school system employees. In the Logan County schools, only 2.2 percent of the 950 employees are minorities, compared with 3.6 percent of students.<sup>21</sup> Moreover, some of these minority employees are not teachers or administrators, but service personnel such as bus drivers, janitors, and cooks. In Mingo County, similarly, there are only 17 minority employees among the 600 professional personnel; the rate of minorities among service personnel is twice as high, with 16 out of 300.<sup>22</sup> The Marion County school system has nine black employees out of 1,171.<sup>23</sup>

Rev. Pollard, whose children attend Logan County schools, noted a particular lack of African American teachers below the high school level:

There are African American role models in our communities, but unfortunately our school system is lacking. . . . It will be high school before my son ever sees or encounters a black teacher, an African American teacher, and it's not right.<sup>24</sup>

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<sup>19</sup> Pollard testimony, *Logan Transcript*, p. 147.

<sup>20</sup> *Ibid.*, pp. 148–49.

<sup>21</sup> White testimony, *Logan Transcript*, p. 99. Data on minority employees of the various school systems are current as of the dates of the forums at which the information was presented.

<sup>22</sup> Fletcher testimony, *Logan Transcript*, p. 104. During the affected agency review of this report, Margaret A. Fletcher, assistant principal, Mingo County Schools, noted that reductions in force and retirements have an impact on figures. Margaret A. Fletcher, fax to Marc Pentino, Eastern Regional Office, U.S. Commission on Civil Rights, June 15, 2002, in response to affected agency review request.

<sup>23</sup> Meade testimony, *Morgantown Transcript*, p. 149.

<sup>24</sup> Pollard testimony, *Logan Transcript*, pp. 145–46.

In Monongalia County, the situation is even more lopsided. The population of the county is 6.8 percent minority, and there are 604 minority students in the county's schools, not only African Americans but also Asian Americans, Hispanics, and American Indians.<sup>25</sup> But only six of the 1,281 full-time school employees are minority—less than one-half of 1 percent. All six employees are black, with no representation from the other groups.<sup>26</sup>

Businessman Leonard George said that the number of minorities employed by the Monongalia County Board of Education has declined steadily for a decade, and he charged that the school board has created “a chilling environment” for its minority students:<sup>27</sup>

We live in a town that had a black mayor for years; we live in a county that has a black member of the House of Delegates, who sits beside me; we live in a county that is the home of the first black West Virginia Supreme Court judge; nevertheless there is a problem with the Monongalia County school board. The hostile environment created by the Monongalia County Board of Education in failing to recruit, hire, and promote minorities not only has a chilling effect in the community in general, but has an irreparable repercussion for preparing Monongalia County students for the diversity they face in their own community and in the world of the new millennium. The role model the Monongalia County Board of Education provides its student body is one of a white segregated world of the 1950s.<sup>28</sup>

Noting that the county school board does not keep records of applications from minorities, Mr. George said:

I have discussed this matter with each of the school board members and I get the same answer from all of them. Answers like: “How many minorities apply to work for the Monongalia County school board?” and “Minorities don't want to work

for us because they find better jobs elsewhere,” and “We don't have many minority employees because there are not many minorities in the county.”<sup>29</sup>

### ***'Double Standard' for Minorities in the University Setting***

The Center for Black Culture and Research, a division of Student Affairs at West Virginia University, frequently receives complaints from African American and Hispanic students. Katherine Bankole, director of the center, told the Morgantown forum:

They feel that there are double standards at the [university] in terms of what is expected of black students versus what is expected of white students. For example, a double standard may be if a student misses an examination, the white student may be able to retake the examination and not suffer any repercussion and the black student may not be allowed to take the examination. . . . They often cite . . . rules, policies, procedures, and practices that they feel clearly demonstrate that there is some type of favoritism or dis-favoritism on the part of teaching faculty at the institution.<sup>30</sup>

Dr. Bankole said minority students feel discouraged from questioning whether a practice may be discriminatory, and thus the dialogue on racial issues becomes “silent”:

Many of our students report issues of faculty discriminating against them and they are retaliated against. Somehow the professor has got even with them for telling, or for implying, or for somehow talking about, a particular issue [concerning] race or racism. . . . I believe that we are all having a dialogue every day, all day, about racism and race relations, but that it is a silent dialogue. A lot of it is going on in our heads; a lot of it is going on in terms of intraracial groups, but not a lot of it is going on interracially.<sup>31</sup>

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<sup>25</sup> George testimony, *Morgantown Transcript*, pp. 115, 118.

<sup>26</sup> *Ibid.*, pp. 115–18.

<sup>27</sup> See appendix 2 for response by Janice Christopher, assistant superintendent, Monongalia Public Schools.

<sup>28</sup> George testimony, *Morgantown Transcript*, pp. 117–18.

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<sup>29</sup> *Ibid.*, p. 116.

<sup>30</sup> Bankole testimony, *Morgantown Transcript*, p. 170.

<sup>31</sup> *Ibid.*, p. 131.

## Barriers to Educational Opportunities for People with Disabilities<sup>32</sup>

In the Morgantown forum, three major concerns were raised about educational opportunities for people with disabilities in West Virginia schools:

- Noncompliance with federal and state laws on special education.
- Climate of hostility and insensitivity to students with disabilities and their parents.
- Barriers to quality education of hearing-impaired students.

### **Noncompliance with Federal and State Laws on Special Education**

Panelists detailed various ways in which state and county educational authorities in West Virginia have failed to comply with key federal statutes on disabilities. These include (1) Section 504 of the Rehabilitation Act of 1973,<sup>33</sup> which prohibits discrimination against persons with a disability by any recipient of federal financial assistance; (2) the Individuals with Disabilities Education Act, or IDEA,<sup>34</sup> which entitles children with disabilities to a “free appropriate public education” in the “least restrictive environment” and based on an “individualized education program”; and (3) the Americans with Disabilities Act of 1990,<sup>35</sup> the key statute outlawing discrimination against people with disabilities in many aspects of public life.

Reed Martin, a Morgantown attorney who has practiced special education law in various

states for 28 years, said, “West Virginia ranks as low as any state I have ever seen in terms of compliance” with the IDEA and Section 504.<sup>36</sup> He based his statement on interaction with more than 1,000 parents in West Virginia over the preceding year, and on the responses his office has received to numerous complaints filed with county, state, and federal agencies.<sup>37</sup>

The school system in Monongalia County, which includes Morgantown, was specifically criticized at the forum. Kent Bryson, a staff attorney with West Virginia Advocates,<sup>38</sup> cited a monitoring report by the West Virginia Department of Education that found the Monongalia County schools out of compliance with IDEA in several respects.<sup>39</sup> Problems cited in the report included:

**Failure to hire qualified special education teachers.**<sup>40</sup> In Monongalia County, 35 special education teachers did not meet the minimum certification standards for teaching special education. This deficiency existed even though barriers to earning special education certification are not high: a teacher in another field needs only six hours of approved college credit to obtain a permit to teach special education, and special education courses are offered by West Virginia University and four other colleges in the area. Mr. Bryson said the county does not attempt to comply with certification requirements.<sup>41</sup>

**Failure to develop adequate IEPs.**<sup>42</sup> While the law requires that qualified special education teachers help develop an individualized education program (IEP) for each student with a disability, there was no process in Monongalia County schools to consistently ensure the development of IEPs that include all components required by federal and state law. More than 40 percent of the IEPs reviewed by the state did not contain annual goals and short-term objectives;

<sup>32</sup> Janice Christopher, assistant superintendent, Monongalia Public Schools, provided a response to various allegations in this section. Places where these responses correspond to the allegations are noted in footnotes. The entire response can be found in appendix 2.

<sup>33</sup> Pub. L. No. 93-112 § 504, 87 Stat. 355, 394 (1973) (codified as amended at 29 U.S.C. § 794 (1994)).

<sup>34</sup> Education of All Handicapped Children Act, Pub. L. No. 94-142, 89 Stat. 773 (codified as amended as the Individuals with Disabilities Education Act at 20 U.S.C. §§ 1400–1485 (1998)). Note that under IDEA, parents are guaranteed due process rights in evaluation and placement decisions regarding the child. For a detailed discussion, see U.S. Commission on Civil Rights, *Equal Educational Opportunity and Nondiscrimination for Students with Disabilities: Federal Enforcement of Section 504, Equal Opportunity Project Series Vol. II*, September 1997.

<sup>35</sup> Pub. L. No. 101-336, 104 Stat. 327 (codified at 42 U.S.C. §§ 12101–12213 (1994)).

<sup>36</sup> Martin testimony, *Morgantown Transcript*, p. 16.

<sup>37</sup> Ibid.

<sup>38</sup> West Virginia Advocates is the designated protection and advocacy agency for West Virginians with disabilities under the federally mandated national protection and advocacy system.

<sup>39</sup> The findings of the report are summarized in Bryson testimony, *Morgantown Transcript*, pp. 49–62.

<sup>40</sup> A response to this allegation can be found in appendix 2.

<sup>41</sup> Bryson testimony, *Morgantown Transcript*, p. 52.

<sup>42</sup> A response to this allegation can be found in appendix 2.

about one-third failed to specify dates for the initiation and duration of services.<sup>43</sup>

**Failure to collect required data.**<sup>44</sup> Current and accurate student data were not collected and maintained as required by law; for example, class lists did not match the actual students served, and teachers did not collect the required data on students' needs for special education services through the summer.<sup>45</sup>

**Failure to eliminate segregated classrooms.**<sup>46</sup> Monongalia County schools did not comply with a court order and settlement agreement issued in a 1991 federal court case<sup>47</sup> where the state school superintendent agreed that all segregated (physically separate) special education classrooms located outside of main school buildings would be eliminated by the beginning of the 1991–92 school year. According to Mr. Bryson, the West Virginia Department of Education cited several schools in the county that still had segregated special education classrooms in violation of the court order.

The Monongalia County school system was ordered to submit written plans for correcting the violations indicated in the report. Mr. Bryson told the forum that such assurances would not be enough, in light of the county's record of failing to comply with the 1991 court order and the other corrective actions ordered by state and federal authorities.<sup>48</sup> "A pattern of consistently ignoring special education students exists in Monongalia County," he charged.<sup>49</sup>

Several additional concerns were raised about the county's schools. State law requires local boards of education to do criminal background checks on all candidates for school employment before hiring; however, the Monongalia County school system has not always done this for employees who work with special education students, applying, in effect, a lower employment standard for personnel who serve disabled students.<sup>50</sup> In 1998, a special education

aide was convicted of felony sexual abuse of a special education student; documents obtained under the Freedom of Information Act revealed that the school system had never requested a criminal background check on the man. Special education students are a particularly vulnerable group, Mr. Bryson noted, because many cannot communicate well and thus cannot easily report abuse.<sup>51</sup>

County officials have not been forthcoming with documents they are required to make public. Recipients of federal funds under the IDEA are required to have a written plan for making "positive efforts to employ qualified individuals with disabilities," but attorney Reed Martin said the Monongalia school system has refused repeated requests to provide a copy of that plan, and the state Department of Education also refuses to show such a plan.<sup>52</sup> Similarly, parents have the right to see a copy of a local school district's plan for use of IDEA funds, but the Monongalia school board has refused to make that plan available.<sup>53</sup>

#### ***Climate of Hostility and Insensitivity to Students with Disabilities and Their Parents***<sup>54</sup>

Reed Martin charged that school districts around the state show insensitivity and hostility to parents who advocate on behalf of their disabled children:

When a parent approaches a school district here and asks about something, they are not responded to, they are attacked. I have not seen anywhere in the country such a hostile environment that is apparently intentional. . . . The Americans with Disabilities Act and Section 504, specifically in the statute under ADA [and] the regulations of 504, protect against "intimidation, retaliation, interference, threats, and coercion," and particularly when you are engaged in the protected activity of advocating for a child. Yet that seems to be a standard pattern.<sup>55</sup>

A related problem is that as soon as a student turns 18 and is legally an adult, the school board

<sup>43</sup> Bryson testimony, *Morgantown Transcript*, pp. 53–54.

<sup>44</sup> A response to this allegation can be found in appendix 2.

<sup>45</sup> Bryson testimony, *Morgantown Transcript*, pp. 54–55.

<sup>46</sup> A response to this allegation can be found in appendix 2.

<sup>47</sup> *Harris v. Marockie*, No. 2:90-1236 (S.D. W. Va. 1991). The settlement agreement can be accessed at <<http://www.wvu.edu/~law/cle/edlaw/marockiesettle.htm>>.

<sup>48</sup> Bryson testimony, *Morgantown Transcript*, pp. 55–58.

<sup>49</sup> *Ibid.*, p. 57.

<sup>50</sup> *Ibid.*, pp. 58–59.

<sup>51</sup> *Ibid.*, pp. 58–61.

<sup>52</sup> Martin testimony, *Morgantown Transcript*, pp. 20–21.

<sup>53</sup> *Ibid.*, pp. 20–22.

<sup>54</sup> A response to this allegation can be found in appendix 2.

<sup>55</sup> Martin testimony, *Morgantown Transcript*, pp. 17–18.

can and sometimes does refuse to continue dealing with the parent as advocate for the disabled young person, insisting instead that the student is the sole person who can now see records, attend IEP meetings, and so forth.<sup>56</sup>

As further evidence of the Monongalia County school board's disregard for people with disabilities, Mr. Martin pointed out that key school board offices are located on upper floors inaccessible to wheelchairs, posing a deterrent not only to potential employees with disabilities but also to disabled parents who may need to visit the offices:

They moved to that inaccessible building after the ADA was in effect and after Section 504 was in effect, [which] said if you are a recipient of federal financial assistance you may not do that. . . . The Section 504 coordinator and the ADA coordinator, and the director of special education are all housed upstairs in a building that is inaccessible to people with mobility impairment. . . . What an incredible symbol of we don't care, we just really don't care.<sup>57</sup>

The Office for Civil Rights (OCR) of the U.S. Department of Education oversees enforcement of ADA and Section 504 in education matters. Mr. Martin said that when a parent brings a complaint about a school district to OCR Region III, which covers West Virginia, in his view the response has been "very, very disappointing":

Region III OCR will accept an oral, verbal representation by a school person: "Okay, we'll never do that again, we'll start doing the right thing." Even though they required the parent complainant to furnish written kinds of information, on that oral representation they'll say, okay, since they have promised to do it, that closes the case, but of course, let us know if they don't do it. Then when you come back and say, "Well, they're not doing it," the Office of Civil Rights will say, "Well, that is a new issue, open a new case."<sup>58</sup>

If a violation continues, OCR can go to court to withhold federal financial assistance, but Mr. Martin believes that Region III has not done that in any recent case and in fact has not really tried to enforce Section 504.<sup>59</sup> (A response to this

section from Wendella Fox, director, Philadelphia Office, Office for Civil Rights, U.S. Department of Education, is provided in appendix 4.)

### **Barriers for Hearing-Impaired Students**

Two points were made: deaf children may suffer from isolation in mainstream classrooms, and sign language interpreters working in classrooms often lack the necessary proficiency.

**Isolation of mainstreaming.**<sup>60</sup> Federal special education law was first designed in the 1970s to place disabled children in regular classrooms, which were thought to provide the "least restrictive environment," but in 1997 the law was changed to recognize the special needs of the hearing impaired, for whom a specialized instructional setting may be less restrictive.<sup>61</sup> Nonetheless, the vast majority of deaf students in West Virginia are still educated in regular public school classrooms with sign language interpreters, and several panelists spoke about the isolating effects of this mainstreaming.<sup>62</sup> Ruby Losh, a disability rights advocate, noted that there is no direct communication between the mainstream teacher and a deaf student:

There is only communication between the interpreter and the student. The teacher is talking to the student and there is a classroom interpreter, but the teacher may not know what is going on between the interpreter and the student. . . . So it is an inclusion program, [but] it is isolating the deaf student in a lot of ways.<sup>63</sup>

By contrast, at the state school for the deaf located in Romney, all teachers and staff know sign language well; students can communicate freely with everyone around them, and the instruction is accessible. However, panelists suggested that the state does not want to publicize the services offered at Romney and that there are barriers to expanding the school.

**Interpreters' proficiency.**<sup>64</sup> Ms. Losh noted that West Virginia does not require certification of American Sign Language (ASL) interpreters

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<sup>56</sup> Ibid., pp. 23–24.

<sup>57</sup> Ibid., pp. 18–20.

<sup>58</sup> Ibid., pp. 89–90.

<sup>59</sup> Ibid., pp. 90–91.

<sup>60</sup> A response to this allegation can be found in appendix 2.

<sup>61</sup> Martin testimony, *Morgantown Transcript*, pp. 79–81.

<sup>62</sup> Ibid., pp. 81–84.

<sup>63</sup> Losh testimony, *Morgantown Transcript*, p. 77.

<sup>64</sup> A response to this allegation can be found in appendix 2.

who work in the public schools,<sup>65</sup> and she said schools often hire uncertified, poorly qualified interpreters because they are cheaper than those fully qualified.<sup>66</sup> Only three of the 10 interpreters in the Monongalia County schools are certified.<sup>67</sup>

There are not enough qualified interpreters in West Virginia to serve the state's approximately 2,000 hearing-impaired children in mainstream classrooms.<sup>68</sup> Only one institution, Fairmont State College, trains ASL interpreters. According to Dolly Ford and Teresa McGonigle, sign language interpreters at the Morgantown forum, the two-year program at Fairmont is not sufficient in itself to produce highly qualified interpreters.<sup>69</sup> They said that there is demand among hearing students in elementary-secondary schools to learn ASL as a foreign language, but that the public schools do not offer it.<sup>70</sup> The interpreters at the Morgantown forum called for elementary-secondary schools to offer ASL as a foreign language so that potential interpreters could begin developing proficiency early.

### **Suggested Strategies and Ongoing Efforts**

Panelists suggested stronger efforts in three areas to improve public schools' treatment of racial minorities and students with disabilities:

#### ***Step Up Efforts to Prevent Harassment and Violence in Schools***

Efforts to prevent harassment and violence must include three components: (1) anti-bias

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<sup>65</sup> A November 2000 survey of 49 state education agencies (SEAs) and two nonstate education agencies revealed that 22 SEAs have minimum certification requirements for educational interpreters. According to the survey, these requirements vary from minimum interpreter skills and a high school diploma to detailed combinations of exams, evaluations, interviews, and SEA screening. Patrice Linehan, "Educational Interpreters for Students Who Are Deaf and Hard of Hearing," Quick Turn Around, Project Forum, November 2000, p. 4.

<sup>66</sup> Losh testimony, *Morgantown Transcript*, pp. 45–48. As with other data on school system employees, this information is current as of the date of the forum.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid., p. 82.

<sup>69</sup> Ford testimony, *Morgantown Transcript*, pp. 82–84.

<sup>70</sup> Ford and McGonigle testimony, *Morgantown Transcript*, pp. 82–86.

training and education for students, beginning at a young age, as well as for teachers and parents; (2) mechanisms to prevent harassment by reporting problems before they escalate; and (3) appropriate responses to incidents when they occur. Although a number of programs underway in the schools contain components that address diversity and tolerance, the Civil Rights Team Project overseen by the Civil Rights Division of the West Virginia Attorney General's Office appears to be the program targeted most specifically at harassment prevention. As such, it should be continued and expanded to other schools in the state.

The Board of Education's Policy 2421 calls for local schools to work with other state and local agencies to design and implement anti-bias programs. Paul Sheridan, coordinator of the West Virginia Hate Crime Task Force, said the task force has been working to develop strategies to support local communities in taking such initiatives, which could include gathering information on existing efforts at the school and county levels, having individuals or groups from the community conduct training in the schools, and constructing more comprehensive programs.<sup>71</sup> Mr. Sheridan said that the regulations create an opening for such efforts but that there is "a long way to go."<sup>72</sup>

#### ***Undertake Aggressive Recruiting of Minority Professionals to Work in Schools***

Although Pat Joe White, assistant superintendent of the Logan County Board of Education, said the Logan County school board is engaged in statewide outreach to recruit more diverse job applicants, other panelists emphasized that much stronger efforts are needed to recruit and hire minorities for professional positions in West Virginia schools. It was also suggested that the hiring practices of the Monongalia County school board be reviewed to see if there is intentional discrimination against minorities.

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<sup>71</sup> Paul R. Sheridan, memorandum to "Those Interested in Not-in-Our-Schools Type Programming," Sept. 8, 1998.

<sup>72</sup> Sheridan testimony, *Logan Transcript*, p. 78.

***Increase the Supply and Proficiency of Classroom  
Sign Language Interpreters***

Sign language interpreters who work in the schools should be highly proficient, and this may mean requiring certification of their level of proficiency. A first step suggested by panelists would be to link the process of hiring interpreters, currently done through school boards, to the state board of evaluators that tests and ranks sign language interpreters.

## CHAPTER 4

# Civil Rights Issues Related to Employment

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The third major area of public life discussed in the three forums was employment and the workplace, and panelists offered striking personal experiences of alleged discrimination and unfair treatment, mainly against African Americans. Four main concerns were highlighted:

- Discrimination against racial minorities in hiring.
- Discrimination against racial minorities in welfare-to-work placements.
- Harassment and discrimination against racial minority employees in the workplace.
- Barriers to employment for people with disabilities.

The background for this discussion is the state's tightening economy with too few jobs, especially in certain parts of the state. Southern West Virginia has been hit by steep declines in coal industry employment, and this appears to have contributed to problems of hiring and workplace discrimination in Logan, Mingo, and McDowell counties, although such problems also exist statewide. John Fullen, president of the Mingo County NAACP and mayor of Matewan, stressed that jobs in the county are "hard to come by," and that alleged employment discrimination is the number one reason for complaints to the Mingo County NAACP.<sup>1</sup> He also pointed out that the bad economy affects race relations in other ways as well, since "when times get hard people have got to find somebody to trounce," and blacks are often the target for these frustrations.<sup>2</sup>

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<sup>1</sup> Fullen testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Logan, WV, Nov. 17, 1998, transcript, pp. 236–46 (hereafter cited as *Logan Transcript*).

<sup>2</sup> *Ibid.*, pp. 241–43.

## Discrimination Against Racial Minorities in Hiring

The theme of racial discrimination in hiring, mainly against African Americans, emerged strongly in the forums.<sup>3</sup> Panelists alleged discrimination by both small and large businesses, distinct situations since small businesses are not subject to federal antidiscrimination laws. Some suggested that social practices, ranging from "informal" hiring to outright nepotism, play a significant role in hiring; although some such practices are not illegal, their impact may be discriminatory nonetheless. Panelists emphasized that perceptions of discrimination in hiring lead to frustration and hopelessness, especially for young people, many of whom leave their communities and do not return.

## Small Employers

Small businesses are becoming an increasingly critical source of jobs in rural communities around the state as opportunities in other economic sectors, especially coal mining, continue to shrink. Small-business owners often prefer to hire informally, finding employees from among a pool of relatives, friends, and acquaintances. In communities where almost all businesses are owned by whites—as is broadly the case in southern West Virginia—this situation presents clear disadvantages for jobseekers who are black. However, under the state Human Rights Act, a business is not considered an "employer" subject to antidiscrimination laws unless it has 12 or more employees, effectively exempting a

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<sup>3</sup> Panelists also referred briefly to hiring discrimination based on gender, age, and national origin, but the discussion focused on racial discrimination in hiring.

great many businesses in the state from scrutiny of their hiring practices.<sup>4</sup>

Paul Sheridan, senior assistant attorney general with the Civil Rights Division of the West Virginia Attorney General's Office, gave an example of how informal hiring practices among small businesses set the stage for discrimination. A convenience store in Buffalo Creek, Logan County, was the subject of a complaint to the state Human Rights Commission:

This small business did its hiring, like a lot of small businesses do, very informally. And as many of you know, informal hiring procedures create all kinds of opportunities for discrimination. . . . What evolved over time was that this particular place completely did away with any kind of application at all. They knew who in the community was looking for jobs and when they had an opening they'd simply go to the people . . . and ask them if they wanted to work there. And so, after a while people simply gave up asking for jobs; particularly African Americans in the community gave up asking about jobs because they were never hired.<sup>5</sup>

An African American man named Dennis Gordon tried to get a job at the store and was not hired. He filed a complaint, but since the store kept no hiring records of any kind, it could not be proven in court that discrimination had occurred. However, according to Mr. Sheridan, the store owners "came to recognize, with the help of the judge," that their hiring practices were discriminatory, and they agreed to formalize their practices by announcing jobs and hiring from a pool of applicants based on criteria specified in the consent decree; they also have to report to the state Human Rights Commission regularly on their hiring.<sup>6</sup> Mr. Sheridan said he hoped the case would send a message to other small employers that they have an obligation not to discriminate.<sup>7</sup>

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<sup>4</sup> W. VA. CODE § 5-11-3(d) (2001). In contrast, under federal law (specifically Title VII and the ADA) an employer (including private sector and state and local government entities) must employ 15 or more employees for each working day in each of 20 or more calendar weeks in the same calendar year as, or in the calendar year prior to when the alleged discrimination occurred. U.S. Equal Employment Opportunity Commission, Compliance Manual (Directives Transmittal Number 915.003), <<http://www.eeoc.gov/docs/threshold.html>>.

<sup>5</sup> Sheridan testimony, *Logan Transcript*, pp. 161–63.

<sup>6</sup> *Ibid.*, p. 166.

<sup>7</sup> *Ibid.*, pp. 163–68.

Mr. Sheridan emphasized that "the real reality" of discrimination "is often not what you can see or what you can prove. . . . The inability to prove it sometimes doesn't mean that it's not there."<sup>8</sup> Discrimination becomes less visible, he said, as people give up applying for jobs because they expect to be turned down.<sup>9</sup>

### **Large Employers**

In Mingo, Logan, and Boone counties, coal companies, schools, and hospitals are among the largest employers. Panelists named several companies that each have 200 to 500 employees but only two, three, or four blacks. Rev. Stephen Hairston, president of the Logan-Boone chapter of the NAACP, said the NAACP is asking such companies to produce the affirmative action plans they are required to have by law:

I see it over and over again; it's blatant. And when you go up to these companies and you ask to see their affirmative action plan—because I know they've got government contracts—they look at you like you're crazy . . . I finally got to see the one at the Mann Appalachian Hospital [in] Mann [West Virginia]. They have one black at Mann Appalachian Hospital [out of 250 to 300 employees].<sup>10</sup>

### **Role of Favoritism and Nepotism**

Several speakers alleged that family connections and other types of favoritism in hiring exclude minorities from jobs.<sup>11</sup> Businessman Leonard George claimed that "there are family clans in [Monongalia] County that have more people working for the Monongalia County school board from one family than all the minority employees combined."<sup>12</sup> Walter Elmore, an African American who tried for years to work his way into a permanent job at the Division of Highways, but was passed over for less experienced white applicants, noted family relationships in the division's work force:

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<sup>8</sup> *Ibid.*, p. 170.

<sup>9</sup> *Ibid.*, pp. 170–71.

<sup>10</sup> Hairston testimony, *Logan Transcript*, p. 249.

<sup>11</sup> A response to this allegation can be found in appendix 2.

<sup>12</sup> George testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Morgantown, WV, June 14, 1999, transcript, p. 119 (hereafter cited as *Morgantown Transcript*).

And it's to the point now if something's not done all you're going to have up there is your taxpaying money is going to be used to further somebody else's family. Because you've got father-daughter, you've got brother-brother, you've got first cousin, you've got uncle, you've got two first cousins, you've got another brother-brother. And up at Mann you've got three brothers, one uncle, one nephew, one first cousin.<sup>13</sup>

Kenneth Ross, an African American with seven and a half years' experience as a juvenile corrections officer, said he could not get hired at the regional jail because jobs were given out as favors.<sup>14</sup> "Anything that goes on in Logan County it's a family thing," he stated. He expressed bitterness with the situation:

When you [look for a job] and nobody is ever considering you . . . you feel defeated before you get there. . . . But how do I go back and tell my kids this: that your dad can't work because certain people won't let him, or they're hiring all their family members, or it's been political favors.<sup>15</sup>

### **Impact of Hiring Discrimination**

Rev. David Bell, a pastor in Mingo and Logan counties, emphasized that young people confronted with discriminatory hiring feel hopeless and frustrated:

This past summer, for example, in the community where I lived . . . there were 30 businesses that employ at least four employees. Those 30 businesses hired 15 young people from Magnolia High School, and not one of those was a minority. We had 10 to apply; one was an honor student, two were honor roll students. They were a group with families of good backgrounds, good work ethics, but they were not considered for employment. They were very discouraged.<sup>16</sup>

He said young African Americans have to leave southern West Virginia to find good jobs as soon as they finish high school.<sup>17</sup> Some have found jobs "at the pizza places and the burger

places, but nobody has a job where they can live on their own or become a productive citizen."<sup>18</sup>

Panelists noted the possibility of mounting a community boycott of businesses that openly discriminate in hiring, but recognized that rural communities often depend on one or two businesses "and if you don't go there, there's nowhere else to go."<sup>19</sup>

### **Discrimination Against Racial Minorities in Welfare-to-Work Placements**

Joanne Farmer, outreach director of New Employment for Women in Logan,<sup>20</sup> reported on a survey done by her group in 1997. Of the 25 people interviewed, including 12 whites and 13 African Americans, five reported experiencing some form of racism affecting their placement. Overall, she noted:

We found that race plays a significant role in the placements and referral. The JOIN program, which pays clients \$1 an hour, plus their welfare check, is the one in which most minorities are placed. The white clients are placed in Job Readiness, GED classes, and real job referrals. Minorities had to give up their GED classes. . . . When the clients complained to the white caseworkers, they were told they should just try harder.<sup>21</sup>

Walter Elmore, an African American in Logan County, spoke about his experiences with welfare-to-work programs and with the state Division of Highways in particular. According to his testimony and to newspaper reports, he worked for the Division of Highways under the JOIN welfare-to-work program for three different six-month periods between 1992 and 1998,

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid., p. 186.

<sup>20</sup> The organization has since changed its name to New Empowerment for Women Plus.

<sup>21</sup> Farmer testimony, *Logan Transcript*, pp. 205–08. Karen O'Sullivan Thornton, director of the Bureau for Children and Families, West Virginia Department of Health and Human Resources, noted that it is possible that some of these individuals were being transitioned from education programs (which emphasized meeting education needs prior to placement in work activities) to work-related programs in an effort to comply with new federal regulations implementing the Temporary Assistance for Needy Families (TANF) program, a work-first program. Karen O'Sullivan Thornton, letter to Marc Pentino, Eastern Regional Office, U.S. Commission on Civil Rights, July 1, 2002, in response to affected agency review request.

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<sup>13</sup> Elmore testimony, *Logan Transcript*, p. 293.

<sup>14</sup> Ross testimony, *Logan Transcript*, pp. 320–21.

<sup>15</sup> Ibid., pp. 315–20.

<sup>16</sup> Bell testimony, *Logan Transcript*, pp. 182–83.

<sup>17</sup> Ibid., p. 183.

earning \$1 an hour, and each time applying for a permanent job.<sup>22</sup> Despite a good work record, each time he was passed over for less experienced white applicants; when he complained to welfare workers, he was simply moved to another workplace.<sup>23</sup>

Based on his experience, Mr. Elmore concluded that the program was “set up to get people off of welfare, but not black people. It’s set up to help white people, but not black people.”<sup>24</sup> In response to a complaint Mr. Elmore filed with the state Human Rights Commission in 1998, the Division of Highways denied any improper action.<sup>25</sup> After the complaint and helping Mr. Elmore fill out a job application, the Division of Highways hired him for an entry-level full-time job in December 1998.<sup>26</sup>

### Harassment and Discrimination Against Minority Employees in the Workplace

Several participants described their personal experiences of on-the-job harassment and discrimination and emphasized that they had few options for responding without endangering their jobs. Christopher Drummer, a kitchen manager/trainee at a restaurant in Logan, recounted an incident the week before the forum, in which a waitress repeatedly used racial epithets such as “black bastard” and “black son of a bitch,” and threw plates at him.<sup>27</sup> Despite complaints to his managers and a record of previous

abuses by the same woman, Drummer had his hours reduced rather than his complaint resolved.<sup>28</sup>

Pete Kelly told the Logan forum of similar harassment when he was employed by a coal company in West Virginia:

I worked hard and I was moving up in the company. And I walked into the warehouse and there was a warehouse employee who said, “You’re the ugliest nigger that I’ve ever seen. I don’t like niggers. I don’t like being around niggers.” Well, if I had hit him, automatically I would have been fired. But this man didn’t lose one day’s work over calling me a nigger, not one day’s work. But if I had hit him, believe me you, I’d a been fired.<sup>29</sup>

Mr. Kelly also reported that he had experienced discrimination while employed as a rock truck driver. He testified that when he attempted to return to work after an injury, as provided by the union contract, the company gave false information to a doctor to interfere with his clearance to return.<sup>30</sup> Mr. Kelly presented a complaint of racial discrimination to the West Virginia Human Rights Commission, citing evidence that a white worker in similar circumstances had been permitted to return to work without hindrance.<sup>31</sup>

At the Morgantown forum, Katherine Bankole, director of the Center for Black Culture and Research at West Virginia University, referred to the experience of minority faculty members discriminated against in their opportunities for advancement. It is a common experience, according to Dr. Bankole, for the goalposts to be shifted; an individual with a master’s degree, for example, may be told that the lack of a Ph.D. is the bar to advancement, only to find another obstacle after earning the Ph.D.<sup>32</sup>

### Barriers to Employment for People with Disabilities

James Jeffers, director of the West Virginia Division of Rehabilitation Services, noted progress in recent years in ensuring the civil rights of people with disabilities, including passage of

<sup>22</sup> Elmore testimony, *Logan Transcript*, pp. 282–86.

<sup>23</sup> *Ibid.*, pp. 282–96.

<sup>24</sup> *Ibid.*, pp. 283–84.

<sup>25</sup> According to the West Virginia Department of Transportation, Division of Highways, the Human Rights Commission issued a “no probable cause” finding in the case. The ruling stated that Elmore’s name never appeared on the Division of Personnel’s roster, which was provided to the Department of Highways, and therefore Elmore could not be considered for a position with the department. Fred VanKirk, secretary/highways commissioner, West Virginia Department of Transportation, Division of Highways, letter to Marc Pentino, Eastern Regional Office, U.S. Commission on Civil Rights, May 28, 2002, in response to affected agency review request. For the department’s full response, see appendix 3.

<sup>26</sup> *Ibid.*; see also Elmore testimony, *Logan Transcript*, pp. 280–303; F. Brian Ferguson, “Logan Man Struggles to Get \$18,000 Job; Racism, Nepotism Alleged at Division of Highways,” *Charleston Sunday Gazette-Mail*, Apr. 11, 1999.

<sup>27</sup> Drummer testimony, *Logan Transcript*, pp. 212–17. Although identified in the transcript, the name of the restaurant has been omitted from this report.

<sup>28</sup> *Ibid.*

<sup>29</sup> Kelly testimony, *Logan Transcript*, p. 271.

<sup>30</sup> *Ibid.*, pp. 258–61.

<sup>31</sup> *Ibid.*, pp. 256–61.

<sup>32</sup> Bankole testimony, *Morgantown Transcript*, p. 137.

the 1990 Americans with Disabilities Act and improvement in physical access to many public buildings and businesses.<sup>33</sup> However, he stressed that barriers to employment of people with disabilities must be broken down before the ADA's goals of equal opportunity, full participation, and economic self-sufficiency can be realized. These barriers include not only direct discrimination against people with disabilities but also other factors that make it difficult or even disadvantageous for people with disabilities to seek employment—most notably, lack of access to health care. Mr. Jeffers explained:

The fear of losing health insurance has been identified as a primary barrier to employment. Individuals who receive cash benefits through Supplemental Security Income [SSI] or Social Security Disability Insurance [SSDI] also receive health care benefits through Medicaid, Medicare, respectively. When employment income results in the elimination of eligibility for SSI, or SSDI, the individual also forfeits access to the highly essential medical benefits. This means the loss of critical residential-, rehabilitation-, and health-related support and services.<sup>34</sup>

Disabled people as a group have serious and chronic medical needs. Knowing this, employers are sometimes reluctant to hire a person with a disability, fearful of the increase in health care costs, and in any case private insurance companies often deny coverage for preexisting conditions. These factors work to exclude people with

disabilities from the work force and from the private insurance market and keep them dependent on government programs.

Helen Matlick, a volunteer with the West Virginia Mental Health Consumers Association, affirmed that loss of access to health benefits is a serious deterrent to employment for people with mental health disabilities.<sup>35</sup> She described the common dilemma of persons returning to work after successful treatment for an illness, only to find that by returning to work they have lost the benefits necessary to keep them healthy enough to continue working.<sup>36</sup>

Lack of public transportation, especially in rural areas, was identified as another major barrier to employment for West Virginians with disabilities. While people with disabilities who live in large cities can often use accessible public transportation to reach job interviews and work sites, accessible public transit simply does not exist in many parts of West Virginia. Additional factors that restrict the possibilities for people with disabilities to work include insufficient and inappropriate education and training, and low use of assistive technologies and workplace adaptations that enable people with disabilities to perform jobs.<sup>37</sup>

## Suggested Strategies and Ongoing Efforts

Panelists offered a few suggestions for strategies to improve opportunities in employment, although little detail was provided in most cases.

### ***Include More Small Businesses Under State Antidiscrimination Laws***

Because so many small employers do not have formal hiring procedures, agencies that enforce civil rights laws must come up with creative strategies for preventing discrimination. A key question is whether it will be possible to “lower the bar” by reducing the number of employees that qualify a business as an employer under the law. Efforts over the past few years to change the way the number of employees is calculated failed in court, and the state legislature recently changed the law to exempt still more

<sup>33</sup> The intent of the ADA is “to ensure that people with disabilities are given the basic guarantees for which they have worked so long and so hard: independence, freedom of choice, control of their lives, the opportunity to blend fully and equally into the rich mosaic of the American mainstream.” The ADA ensures (1) employers covered by the act cannot discriminate against qualified individuals with disabilities; (2) access to public accommodations and government services; (3) expanded access to transportation services; and (4) equivalent telephone services for people with speech or hearing impairments. See President George Bush’s Remarks on Signing the Americans with Disabilities Act of 1990, Public Papers of the Presidents of the United States, George Bush, (Washington D.C.: National Archives and Records Administration, 1990), Book 2, p. 1068. 42 U.S.C. §§ 12101–12213.

<sup>34</sup> Jeffers testimony, *Morgantown Transcript*, pp. 28–33. A possible remedy to this concern is provided by the passage of the Ticket to Work and Work Incentives Improvement Act in late 1999, which allows people with disabilities to retain federal health benefits if they resume work. This point is described in greater detail in the U.S. Commission on Civil Rights report, *Sharing the Dream: Is the ADA Accommodating All?* October 2000, p. 34.

<sup>35</sup> Matlick testimony, *Morgantown Transcript*, pp. 43–44.

<sup>36</sup> *Ibid.*, pp. 42–45.

<sup>37</sup> Jeffers testimony, *Morgantown Transcript*, pp. 34–38.

small businesses from antidiscrimination laws.<sup>38</sup> Although it will likely be difficult to get the legislature to lower the bar, such efforts are increasingly important in the current economic climate.<sup>39</sup>

### ***Increase Access to Education in Welfare-to-Work Programs***

Joanne Farmer of New Employment for Women stressed the importance of education, including GED, vocational, and postsecondary programs, in removing barriers to success for people on public assistance, and she called for public policies to make this happen:

We are really advocating now for our clients to be able to continue their education. And we're hoping that on a statewide level this will be mandated. In some states they give up to, I think, 20 percent of the welfare recipients the chance to go on to higher education. . . . We feel that by doing this, we're not only giving the children in these families people to look up to, we're giving these people a way out—out of minimum wage into jobs that pay a living wage where they can support their families.<sup>40</sup>

### ***Cut Red Tape in Handling of Complaints***

One existing strategy for responding to hiring or workplace discrimination is for affected individuals to file complaints with appropriate agencies, including the state Human Rights Commission and the U.S. Equal Employment Opportunity Commission. Several speakers mentioned having taken such action, but with disappointing results. Rev. Russell Medley, a Baptist pastor, noted that “if you go to EEOC, it may take you anywhere from two to five years to get your case heard.”<sup>41</sup> He pointed out that long delays

are a critical problem in employment cases, where victims of discrimination may be left without income while complaints wind their way through the bureaucracy; they may also be blacklisted by employers for having made a complaint.<sup>42</sup> He and other speakers called for authorities to take whatever steps necessary to cut red tape and deal expeditiously with complaints of workplace and hiring discrimination.<sup>43</sup>

### ***Remove Barriers to Employment for People with Disabilities***

James Jeffers, director of the West Virginia Division of Rehabilitation Services and himself a person with a disability, recommended overhauling the current system for providing health care to people with disabilities, which constitutes a disincentive to work.<sup>44</sup> He called in general terms for reforms to create access to affordable, adequate, private health care for people with disabilities. In addition, steps should be taken to provide accessible transportation, appropriate training, assistive technologies, and other workplace supports to enable people with disabilities to overcome obstacles to sustainable integration into the work force.<sup>45</sup>

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<sup>38</sup> Under the West Virginia Human Rights Act, an employer is defined as the state, any political subdivision thereof, and any person (not including a private club) employing 12 or more persons within the state. In 1998, Code § 5-11-3(d) was amended to specify that persons be employed “for twenty or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year.” See W. VA. CODE § 5-11-3(d) (2001).

<sup>39</sup> Sheridan testimony, *Logan Transcript*, pp. 172–76.

<sup>40</sup> Farmer testimony, *Logan Transcript*, p. 208.

<sup>41</sup> Medley testimony, *Morgantown Transcript*, p. 109. In the affected agency review of the Advisory Committee’s report, Eugene Nelson, director of EEOC’s Pittsburgh Area Office, disagreed with the assertion that it takes two to five years before a case is heard. He notes that the office investigates charges as soon as they are filed, does not have charges that

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are that old, and processes cases in an average of 180 days or less. Eugene V. Nelson, director, Pittsburgh Area Office, U.S. Equal Opportunity Commission, letter to Marc Pentino, Eastern Regional Office, U.S. Commission on Civil Rights, June 5, 2002.

<sup>42</sup> *Ibid.*, pp. 209–13.

<sup>43</sup> *Ibid.*

<sup>44</sup> Jeffers testimony, *Morgantown Transcript*, pp. 30–33. A possible remedy to this concern is provided by the passage of the Ticket to Work and Work Incentives Improvement Act in late 1999, which allows people with disabilities to retain federal health benefits if they resume work. This point is described in greater detail in the U.S. Commission on Civil Rights report, *Sharing the Dream: Is the ADA Accommodating All?* October 2000, p. 34.

<sup>45</sup> *Ibid.*

## CHAPTER 5

# Hate Crimes

On July 4, 2000, in Grant Town in Marion County, J.R. Warren, a young black gay man, was killed after being beaten nearly to death by three white teenagers, who then ran over him with a car to disguise the crime as a hit-and-run accident. Two teens pleaded guilty to murder, and a third pleaded guilty as an accessory.<sup>1</sup> Although the killing sparked outrage, prosecutors contended that the motive was an argument rather than the victim's race or sexual orientation; federal authorities subsequently opened an investigation to determine whether the murder was a racially motivated hate crime.<sup>2</sup>

Although the Warren murder occurred after the three community forums, the state's response to hate crimes and incidents was a major topic of discussion at the forums. Panelists focused on the work of the West Virginia Hate Crime Task Force, which fosters collaboration among law enforcement agencies, other state officials, civil rights groups, schools, and community groups to respond to hate crimes. Panelists commended the successful initiatives of the

task force in several areas, while pointing out the need to continue and greatly expand its work. In addition, panelists called for legislative changes to include people with disabilities as a protected class under the West Virginia hate crimes statute.

### Overview of the Hate Crime Task Force

The Hate Crime Task Force was created in 1991 by the West Virginia Human Rights Commission as an ongoing advisory committee to the commission. The initiative came from the Civil Rights Division of the West Virginia Attorney General's Office, and was prompted by the federal Hate Crimes Statistics Act of 1990, which mandated that the U.S. attorney general compile hate crime statistics reported voluntarily by state law enforcement agencies.<sup>3</sup> Paul Sheridan, senior assistant attorney general with the Civil Rights Division and coordinator of the Hate Crime Task Force, outlined the activities of the task force to the Logan forum, and the work of the task force was presented to the Charleston forum by West Virginia Attorney General Darrel V. McGraw.<sup>4</sup>

<sup>1</sup> See the Associated Press, "Hate Crimes Review Remains Open," *Charleston Gazette*, Aug. 26, 2001; and the Associated Press, "Teen Pleads Guilty in Brutal Death of Black Man," *Charleston Gazette*, July 20, 2001.

<sup>2</sup> A hate crime is defined as a criminal offense, usually involving violence, intimidation, or harassment, in which the victim is targeted because of bias against a group or class of people to which the victim belongs. As such, they not only injure the direct victim but also send a message that creates fear and insecurity in the community the victim represents. Paul R. Sheridan, senior assistant attorney general, Civil Rights Division, West Virginia Office of the Attorney General, West Virginia Hate Crime Task Force, *Annual Report of the West Virginia Hate Crime Task Force*, submitted to Ivan B. Lee, executive director, West Virginia Human Rights Commission, June 2000, p. 9. Neither the federal hate crimes statute nor the West Virginia hate crimes law covers crimes committed because of a victim's sexual orientation, so the federal investigation is looking only at whether the Warren murder involved racial hatred.

<sup>3</sup> The Hate Crimes Statistics Act of 1990 required the U.S. attorney general to establish guidelines under the Uniform Crime Reporting Program (UCR) for the collection of data on hate crimes for four years beginning in 1990. In 1996, the Church Arson Prevention Act continued hate crimes data collection under the UCR program for each subsequent calendar year. U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, *Hate Crime Data Collection Guidelines*, October 1999, p. 1.

<sup>4</sup> Sheridan testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Logan, WV, Nov. 17, 1998, transcript, pp. 67–79 (hereafter cited as *Logan Transcript*); McGraw testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Charleston, WV, Apr. 20, 2000, transcript, pp. 94–97 (hereafter cited as *Charleston Transcript*). For additional background on the

Active since 1992, the Hate Crime Task Force brings together senior representatives from West Virginia law enforcement agencies, other state agencies, and civil rights organizations. It focuses on diverse coalition-building to combat hate crimes. Despite lacking tangible resources such as its own offices and staff, the task force has significantly enhanced the state's ability to prevent and respond to hate crimes by taking initiatives in the following areas:

- Reporting and data collection on hate crimes and hate incidents.
- Training for law enforcement agents on how to recognize and respond to hate crimes.
- Hate crime prevention programs in secondary schools.
- Hate crime education in communities.<sup>5</sup>

Task force coordinator Paul Sheridan stressed that addressing hate crimes remains a large task that requires additional efforts not only by law enforcement officials but also by other sectors.<sup>6</sup>

## Reporting and Collecting Data on Hate Crimes

Since 1992, the Hate Crime Task Force has maintained a database of hate crimes and other incidents that may contribute to a climate of hate without necessarily involving a criminal act. To facilitate data collection, the task force has established and publicized a telephone hot line that citizens can use to report hate crimes and incidents. Of the incidents recorded from 1992 through June 2000, 120 were classified as probable hate crimes. Of these, 63 percent involved a racial bias, 23 percent a sexual orientation bias, 9 percent a religion bias, 3 percent an ethnic origin bias, and 2 percent a disability

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task force and its work, see Chuck Smith et al., "West Virginia's Hate Crime Task Force," *West Virginia Public Affairs Reporter*, vol. 17, no. 4 (Fall 2000), Institute for Public Affairs, West Virginia University; West Virginia Hate Crime Task Force, *West Virginia Hate Crime Law: Training Manual*; and *Annual Report of the West Virginia Hate Crime Task Force*, June 2000.

<sup>5</sup> As of January 2002, the task force receives funding through a grant from the U.S. Department of Justice. The grant is sent to the West Virginia Division of Criminal Justice Services for approval.

<sup>6</sup> Sheridan testimony, *Logan Transcript*, pp. 67–70.

bias.<sup>7</sup> The following examples cited in the task force database are illustrative of reported incidents:

- June 2000—An African American man had a swastika carved into the paint of his car and other damage done to his vehicle while visiting his white girlfriend in Kanawha County.
- March 2000—A man wearing a "gay pride" T-shirt was assaulted and struck in the face by a group of 8–10 youths outside his home in Charleston. The group also threw a brick through his front window; the next day, after he had reported the incident to police, his house was vandalized again.
- August 1999—Four African American women were attacked in Cabell County by two white men. All four women were physically assaulted and struck with fists by the men, who also hurled racial epithets.<sup>8</sup>

The database maintained by the task force provides a useful resource to gauge potential hate crime incidents and racial tension. The task force does not independently investigate incidents it receives, although state or local police may investigate some. Since the database consists of telephone calls from citizens and newspaper accounts of incidents, it supplements the hate crime data collated by the West Virginia State Police under the state's Uniform Crime Reporting Program (UCR).<sup>9</sup>

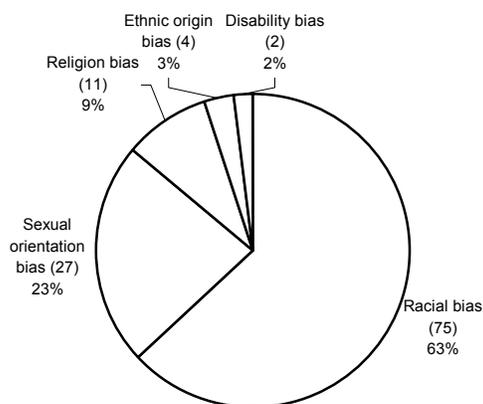
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<sup>7</sup> *Annual Report of the West Virginia Hate Crime Task Force*, p. 12. The West Virginia hate crimes statute (W. VA. CODE § 61-6-21) specifically mentions "race, color, religion, ancestry, national origin, political affiliation, or sex" as motives for hate or bias crimes. Neither disability nor sexual orientation is included, and crimes motivated by disability or sexual orientation therefore cannot be charged under § 61-6-21. However, as explained in the training manual produced by the West Virginia Hate Crime Task Force, these offenses are still hate crimes. They should be reported as such under the Uniform Crime Reporting Program, and may be chargeable under one or more categories of common law offenses. See West Virginia Hate Crime Task Force, *West Virginia Hate Crime Law: Training Manual*, p. 20.

<sup>8</sup> *Annual Report of the West Virginia Hate Crime Task Force*, appendix B1, B2.

<sup>9</sup> West Virginia is one of many states opting into the Federal Bureau of Investigation's (FBI) Uniform Crime Reporting program. Under West Virginia Code § 15-2-24(i), all state, county, and municipal law enforcement agencies are required to submit uniform crime reports to the Department of Safety's Criminal Identification Bureau. In 1997, the West Virginia State Police implemented data collection and reporting guidelines whereby agencies are required to collect

**FIGURE 5. Suspected Bias Crimes and Incidents Reported to the West Virginia Hate Crime Task Force, 1992–June 2000**



SOURCE: West Virginia Hate Crime Task Force, Annual Report, June 2000.

Since 1996, West Virginia has included hate crimes in its UCR reports.<sup>10</sup> Until 1998, there was a serious problem of underreporting. For example, in 1996, only 7 percent of West Virginia's 317 police departments were keeping hate crime data.<sup>11</sup> At the Logan forum, Mr. Sheridan testified, "We have a very, very incomplete picture of how serious the problem is. I wish I could tell you . . . whether it's getting better or worse. . . . It's clear that there is a serious problem. We know that. But beyond that we can't really say."<sup>12</sup> However, according to recent statistics, the percentage of law enforcement agencies submitting information to the UCR has steadily improved. In 1998 (at the time of the Logan forum), 37 percent of police departments provided data and the UCR reported a total of 21 hate crimes.<sup>13</sup> In 1999, approximately 70 percent

information on hate crimes and convert their previous system to the State Police incident-based reporting system. These data are submitted to the FBI. First Lt. S. Gale Midkiff, West Virginia State Police, telephone interview with Marc Pentino, Eastern Regional Office, U.S. Commission on Civil Rights, Aug. 16, 2002. See also W. VA. CODE § 15-2-24(i) (2001); W. VA. PROCEDURAL RULE 81-11-1-81-11-10 (1997).

<sup>10</sup> *Annual Report of the West Virginia Hate Crime Task Force*, p. 10.

<sup>11</sup> *Ibid.*, p. 9.

<sup>12</sup> Sheridan testimony, *Logan Transcript*, p. 74.

<sup>13</sup> *Annual Report of the West Virginia Hate Crime Task Force*, pp. 10–11.

of law enforcement agencies in West Virginia reported crime information to the State Police. This figure has steadily risen to approximately 85 percent in 2000, 92 percent in 2001, and 95 percent in 2002.<sup>14</sup>

Speaking at the Morgantown forum, Jim Jeffers, director of the West Virginia Division of Rehabilitation Services, noted that West Virginia does not include people with disabilities as a protected class under the state hate crimes statute, nor does the federal statute.<sup>15</sup> He observed that many people do not want to believe that such incidents occur, and that reports are even more incomplete than with hate crimes against other groups.<sup>16</sup> Many states do include people with disabilities as a protected class, although the federal law does not.<sup>17</sup> He recommended that West Virginia and federal laws on hate crimes be amended to cover crimes motivated by bias against the victim's physical or mental disability.<sup>18</sup>

### Training for Law Enforcement on Hate Crimes

Since 1997, the Hate Crime Task Force has been working with law enforcement agencies to provide in-service training for police officers on "Responding to Hate Crimes." It has received national recognition for its team model of hate

<sup>14</sup> First Lt. S. Gale Midkiff, West Virginia State Police, telephone interview with Marc Pentino, Eastern Regional Office, U.S. Commission on Civil Rights, Aug. 16, 2002. See W. VA. CODE § 15-2-24(i) (2001); W. VA. PROCEDURAL RULE 81-11-1-81-11-10 (1997).

<sup>15</sup> Jeffers testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Morgantown, WV, June 14, 1999, transcript, p. 40 (hereafter cited as *Morgantown Transcript*).

<sup>16</sup> Jeffers testimony, *Morgantown Transcript*, pp. 41–42.

<sup>17</sup> *Ibid.*, pp. 40–42.

<sup>18</sup> *Ibid.* Although not discussed in the community forums, pressure has also been growing, especially since the Warren murder, to expand hate crime laws, particularly at the state level, to cover crimes motivated by hatred of gay men and lesbians. For example, in both 2000 and 2001, the West Virginia Senate passed a hate crime bill that would add sexual orientation and disability to the list of motives. Both times the bill died in the House, but supporters of the legislation say they are slowly gaining votes. In fall 2001, the Charleston City Council began considering a hate crime bill for the city that would cover crimes based on sexual orientation or disability as well as those already covered by the state law. See Deanna Wrenn, "Charleston Council Will Weigh Its Own Hate Crime Bill; Gay or Disabled People Could Have New Protections," *Charleston Daily Mail*, Nov. 2, 2001.

crime training, in which each training team includes a law enforcement officer, a prosecutor, and someone with a community, civil rights, or victims' rights perspective. About 300 to 400 police officers a year attend the eight-hour training program. The training is also available to cadets at the West Virginia State Police Academy, and a 22-minute video developed by the task force (*Targets of Hate*) has been available since 1998.<sup>19</sup>

## Hate Crime Prevention Programs in Schools

Paul Sheridan told the Logan forum, "We know from what data we have that the majority of hate crimes are committed by young people" acting out the prejudices of their parents.<sup>20</sup> Furthermore, a significant proportion of reported hate crimes and incidents takes place in or around schools.<sup>21</sup> Hate crime prevention programs in secondary schools not only reach a target population of teenagers at risk for being involved in hate incidents but also help to keep schools free of bias-motivated harassment that can interfere with learning.

In 1997 and 1998, the task force assisted the West Virginia State Board of Education in formulating, enacting, and implementing regulations addressed at bias-motivated harassment and violence in schools (Policy 2421), and the task force has also provided training to educators on how to implement the policy.

In 1999, the Civil Rights Division of the West Virginia Attorney General's Office launched a pilot program in 12 secondary schools across the state, the West Virginia Civil Rights Team Project.<sup>22</sup> Based on a successful model from the

state of Maine, the project makes use of teams of students in each school who work through student-initiated projects to make their school a more tolerant place. In addition to changing the general climate in schools, the pilot project aims to create mechanisms by which minority students or their friends can alert school officials to harassment before it escalates to the level of serious violence. Panelists expressed hope that this promising program would be continued and expanded to other schools in the state.

## Training for Communities on Hate Crimes

The Hate Crime Task Force has also provided training for trainers and education resources to build community ability to recognize and prevent hate crimes. The task force efforts include showing educational materials from the Not in Our Town project.<sup>23</sup> The project includes a documentary based on the successful efforts of Billings, Montana, wherein residents responded to hate and discrimination in their community.

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<sup>19</sup> *Annual Report of the West Virginia Hate Crime Task Force*, pp. 2–3.

<sup>20</sup> Sheridan testimony, *Logan Forum*, pp. 76–77.

<sup>21</sup> *Annual Report of the West Virginia Hate Crime Task Force*, p. 13.

<sup>22</sup> See West Virginia Office of the Attorney General, Civil Rights Division, "Civil Rights Team Project," which states: "The civil rights team at each school consists of three students per grade, plus one or two faculty advisors. The teams attend an orientation program conducted by the Civil Rights Division of the Attorney General's Office, and then work throughout the school year to provide education and awareness on issues of bias and prejudice. Additionally, the teams create a mechanism by which students can provide information about harassment directly to team members. The teams have no responsibility with respect to discipline. Rather, when the teams learn of harassment, their responsibility is to pass the information on to the appropriate school or law

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enforcement authorities. The Civil Rights Division also conducts an in-service training for the faculty and administrators of each of the participating schools. The three-hour training program is conducted by a two-person team which includes a staff attorney from the Civil Rights Division and an educator." <<http://www.wvonline.com/efhs/civilrights/attorneygen.htm>>.

For project details, see West Virginia Office of the Attorney General, *1999–2000 Civil Rights Team Project: Fall Training Manual*, June 2000; and McGraw testimony, *Charleston Transcript*, pp. 90–94.

<sup>23</sup> Sheridan testimony, *Logan Transcript*, p. 78.

## CHAPTER 6

# A Community Climate of Intolerance

The bulk of the testimony at the three forums addressed issues related to law enforcement, education, and employment—three major arenas of public life where civil rights issues and racial relations are played out. Participants also, however, presented a range of additional personal experiences and observations of day-to-day racial stereotyping, discriminatory treatment, and intimidation in other aspects of life that contribute to the civil rights climate and are a part of the larger picture. Some incidents of this nature can be verified and pursued through formal complaints, while others are difficult or impossible to pursue. In all cases, however, the impact on people is real and leads to great frustration—frustration that often deepens to despair as repeated official promises to act on problems amount to nothing.

Katherine Bankole, director of the Center for Black Culture and Research at West Virginia University, said African Americans are frequently stereotyped based on their appearance; for example, a dark-skinned person dressed a certain way, spending cash, may be assumed to be a drug dealer.<sup>1</sup> She noted:

African American married women who are faculty at WVU said that when they are by themselves without their husbands, with their children . . . they're often perceived or approached as if they are a welfare mother, a dreaded single welfare mother who is a complete drain on society, and treated as such.<sup>2</sup>

Other panelists made the point that even a professional appearance does not protect against

racist stereotyping. Rev. Alfonso Heyliger, pastor of Ferguson Baptist Church and president of the Charleston Black Ministerial Alliance, told the Charleston forum of his own experience:

About a month ago, I went into a Rite Aid. I have on a suit because most times I wear a suit, and a lady there, a white lady, as soon as I walked in, she went and she followed me, looked at me funny. When our eyes met, she turned and she walked away. . . . Regardless of what [I achieve] personally, professionally, and what have you, somebody is going to follow me, be suspicious of me because I am black. It is not disputed.<sup>3</sup>

Rev. Heyliger expressed concern for young African Americans, saying that “their minds and their spirits are kind of breaking by this negative feeling . . . If I, who am supposed to be successful, did all the right things, dress all the right ways, if I can feel that, you can imagine young people in a hip-hop generation.”<sup>4</sup>

The Center for Black Culture and Research receives wide-ranging complaints from minority students, mainly black and Latino, as well as from minority faculty, staff, and community members. According to Dr. Bankole, they report being:

- Monitored in stores, through a coded public announcement to store employees that blacks have entered the premises.
- Followed in stores by security guards.
- Ignored by sales clerks in the apparent belief that blacks do not have money to spend.
- Refused the rental of apartments.

<sup>1</sup> Bankole testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Morgantown, WV, June 14, 1999, transcript, p. 142 (hereafter cited as *Morgantown Transcript*).

<sup>2</sup> Bankole testimony, *Morgantown Transcript*, pp. 142–43.

<sup>3</sup> Heyliger testimony before the West Virginia Advisory Committee to the U.S. Commission on Civil Rights, community forum, Charleston, WV, Apr. 20, 2000, transcript, pp. 217–18 (hereafter cited as *Charleston Transcript*).

<sup>4</sup> Heyliger testimony, *Charleston Transcript*, p. 218.

- Subjected to unwritten policies and procedures, such as identification checks when making a purchase.
- Subjected to extra physical checks, for example, at airports.<sup>5</sup>

Allen Lee, president of the Harrison County chapter of the NAACP, provided an example of such an incident to the Morgantown forum:

A young man went over to Fairmont to a club there and was denied entrance there because he was with three other white fellows. First, all they needed was a card identification. When it came to him, he wasn't dressed appropriately. He left, went home, dressed appropriately, and came back with his one card of identification and he was then told he needed two cards of identification. And also one of the employees there was heard to make the remark, "We don't want him in here anyway." So eventually the police were called and the young man was asked to leave.<sup>6</sup>

Pervading the discussions was the sense that to be a racial minority in a demographically homogeneous state such as West Virginia is an isolating and sometimes intimidating experience. According to Dr. Bankole, some black students fear visiting certain areas of West Virginia:

And they say, you know, you can't go to a certain county at night if you are a person of color, because that could be trouble. And perceptions, sometimes, are everything. Even if it's not true, the fact that somebody is talking about it [means] that perhaps for some people, no matter how small the number, it is true.<sup>7</sup>

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<sup>5</sup> Bankole testimony, *Morgantown Transcript*, pp. 132–37.

<sup>6</sup> Lee testimony, *Morgantown Transcript*, p. 125.

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<sup>7</sup> Bankole testimony, *Morgantown Transcript*, pp. 143–44.

# Findings and Recommendations

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Following is a brief summary of key findings of the West Virginia Advisory Committee, drawing on the testimony of participants at the Logan, Morgantown, and Charleston forums and additional documentation submitted. Each finding is accompanied by a set of recommended approaches, and in some cases, specific actions, that can address the finding.

### **Finding 1. Troubled Police-Community Relations**

Recent publicized incidents of police brutality have sharpened longstanding tensions between law enforcement agencies in the state and West Virginians who belong to racial minority groups, particularly African Americans. In addition to the perception that police officers often use excessive force against black suspects and defendants, minority citizens perceive a pattern of discriminatory treatment and petty harassment by officers, including disproportionate stops and arrests of black youth under Charleston's curfew law, the Youth Protection Ordinance.

Tensions between police and minorities are exacerbated by the fact that law enforcement agencies in the state are overwhelmingly white and male, with very few minority and female officers, especially in the upper ranks. Efforts to recruit, hire, and promote qualified minority officers have been insufficient, and outdated civil service regulations may also limit hiring. There are also concerns about low age and educational requirements for police recruits in general. Low pay relative to other jurisdictions impedes the recruitment, hiring, and retention of highly qualified officers of all backgrounds, although many currently on the job are experienced and dedicated officers who serve despite low pay. Current promotion criteria do not take sufficient account of an officer's ability to communicate

and interact fairly with citizens of diverse backgrounds.

There are concerns in communities that internal and external procedures for providing oversight of police activities and penalizing officer misconduct are inadequate. Existing citizen review boards in Charleston and Bluefield have little authority. Efforts in the state legislature and in communities to establish additional citizen review boards have been controversial and have met with resistance from law enforcement agencies.

To improve police-community relations, some law enforcement agencies in the state are working with public officials, community groups, and businesses to promote the involvement of officers in the communities they serve through such efforts as the federally funded COPS program.

### **Recommendation 1.1**

The West Virginia legislature should take steps to (1) review the effectiveness of existing citizen review boards in the state, for example, in Charleston and Bluefield, that oversee police activities; (2) evaluate the need for, and the potential advantages and disadvantages of, instituting citizen review in other communities, either as a statewide board or as individual boards in different jurisdictions, and examine the authority that such boards might have; and (3) issue the result of such evaluation and if justified pass legislation implementing the desired review board.

### **Recommendation 1.2**

The Charleston Police Department should review statistics on stops and arrests under the city's Youth Protection Ordinance, in terms of race, sex, and area of residence, as well as evaluate the effectiveness of the ordinance.

Based on this information, the Charleston police and the City Council should modify the law if deemed justified by the findings or eliminate the law if it is found discriminatory.

### **Recommendation 1.3**

The West Virginia State Police and local police departments should take vigorous steps to recruit, hire, retain, and promote more minority and female officers. Some of these steps include (1) examining relevant civil service regulations to determine whether they impede the hiring of qualified minority and female officers, and evaluating the need to modify the regulations; (2) examining testing instruments used for hiring and promotion, and examining tests used in other states, with a view to updating or replacing tests if necessary; (3) actively recruiting in minority communities; and (4) broadening criteria used in promotion decisions that consider the officer's interpersonal and communication skills and ability to interact with citizens of diverse backgrounds.

### **Recommendation 1.4**

The West Virginia legislature and state and local law enforcement agencies should investigate the extent age (as an indicator of maturity and judgmental capacity) and education of law enforcement officers may be correlated with officer misconduct, and should evaluate the desirability and feasibility of raising age and educational requirements for recruits. They should also examine the feasibility of raising officer pay in order to attract more recruits with some post-secondary education and retain highly qualified and able officers.

## **Finding 2. Barriers to a Quality Education for Racial Minorities**

Regulations promulgated by the West Virginia State Board of Education in 1996, known as Policy 2421, prohibit harassment and violence in the public schools based on race/ethnicity, sex, or religion, and require county school boards to develop procedures for responding to harassment incidents. The policy also calls for county boards of education, working with communities, to develop comprehensive harassment prevention programs. A promising example of such a program is the Civil Rights Team Project

launched in 1999 as a pilot in 12 secondary schools in the state.

Despite this progress, harassment in schools continues to be reported to organizations such as the West Virginia Hate Crime Task Force, the NAACP, and the American Friends Service Committee. Although some schools and educators have responded effectively to such incidents, in other cases little has been done, and the absence of comprehensive and coordinated measures reflects the need for more thorough enforcement of the 1996 regulations.

School systems in the state typically have very few minority personnel, especially in teaching and other professional positions, resulting in a lack of minority role models for students. This is a concern not only for minority students, who may feel they lack advocates in the school system, but also for white students whose understanding of diversity would be enhanced by contact with minority teachers.

There is also concern among minority parents that some schools and educators set low expectations for the academic achievement of minority students and do not encourage them to prepare for college. However, educators point to several programs underway in the schools, such as the Advisor-Advisee program, designed to help all students transition to college or work.

### **Recommendation 2.1**

To fully comply with the 1996 Board of Education regulations (Policy 2421), county school boards should step up efforts to develop and implement programs aimed at preventing and responding to harassment in schools. County school boards should plan and collaborate with state and local agencies as called for in the regulations to implement programs. The West Virginia Civil Rights Team Project, launched as a pilot program in 1999 by the Civil Rights Division of the West Virginia Attorney General's Office, is showing encouraging results and should be expanded to other schools in the state.

### **Recommendation 2.2**

With a view to providing minority role models for all students, county school boards should undertake vigorous and sustained actions to hire and promote minority professionals, especially for teaching and school administrative positions. Special attention should be given to recruiting

African American teachers at all levels but particularly for grades below the high school level. In addition, to ensure that schools support high academic achievement for all students, local school systems should work to identify and replicate best practices aimed at helping minority students set and achieve high goals.

### **Finding 3. Discrimination Against Minorities in Hiring and in the Workplace**

Minority communities continue to have deep concern and frustration about racial discrimination in hiring. In areas where almost all businesses are owned by whites, many small businesses engage in informal hiring practices, drawing on a pool of relatives and friends. This situation sets the stage for discrimination against minority applicants, yet businesses with fewer than 12 employees are exempt from state antidiscrimination laws. At the same time, some of the state's largest employers such as coal companies, hospitals, and school systems have very few minority employees, and some that are federal contractors have resisted making public their required affirmative action plans.

In welfare-to-work programs, meanwhile, it is reported that minorities are often placed in lower-paying programs and in jobs that offer less opportunity for educational advancement or permanent job status, thus diminishing the chances for minority clients to achieve sustainable integration into the paid work force.

African American employees report disturbing incidents of discrimination and harassment in the workplace, including discriminatory treatment by employers, racial taunts by co-workers, and even physical violence. In the short term, they have few options for responding to such treatment without endangering their jobs. Although channels exist for filing complaints with state and federal agencies, this process may take years, and thus does little to help employees resolve their immediate concerns.

#### **Recommendation 3.1**

The West Virginia legislature should evaluate the allegation that small businesses, because they are exempt from state antidiscrimination laws, may discriminate against racial minorities in hiring without consequences. If this allegation is supported, the legislature should devise cor-

rective measures, possibly including action to reduce the number of employees that qualify a business as an employer subject to antidiscrimination laws.

#### **Recommendation 3.2**

State and local authorities responsible for welfare-to-work programs should evaluate placement and referral practices to determine the extent racial bias may play a role, and if warranted, should develop corrective measures. Regardless of race, clients should be encouraged and given support to continue their education while in the programs in order to improve their future job prospects.

#### **Recommendation 3.3**

Allegations that employment discrimination complaint processing is excessively slow and hampered by red tape should be investigated. Appropriate state and federal agencies, such as the Equal Employment Opportunity Commission, the West Virginia Human Rights Commission, and the Civil Rights Division of the West Virginia Attorney General's Office, together with advocacy organizations such as the NAACP, should participate in assessing whether mechanisms for processing such complaints can be enhanced to provide speedier relief to victims of discrimination and restore public trust in the system.<sup>1</sup>

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<sup>1</sup> As part of the affected agency review process, Norman Lindell, then director of the West Virginia Human Rights Commission and member of the Advisory Committee, clarified the Human Rights Commission's complaint processing. He noted: "The Commission has changed its process in order to complete its investigation of cases on average within 180 days from the date the complaint is filed. We have a sophisticated case management system which tracks all cases on the Commission's docket. The average age of cases currently under investigation is 120 days. Further we have established two separate alternative dispute resolution programs. The Commission offers a voluntary program to attempt to settle cases early in the investigatory process. Either party may request participation in the pre-determination conciliation/mediation program. The investigative staff may recommend that a particular case may benefit from this program. If that occurs, the parties are contacted to ask if they would be interested in participating in the program. The Commission is resolving approximately 60% of the cases in the program. The Commission can also compel the parties to participate in mediation after a finding of probable cause. The administrative law judges are requiring all cases assigned to them be mediated." Norman Lindell, memorandum to Marc Pentino, Eastern Regional Office, U.S. Commission on Civil Rights, Jan. 30, 2002.

## **Finding 4. Barriers to Education and Employment for People with Disabilities**

Failure of some state and local education authorities to comply with key federal disability statutes deprives children with disabilities of their legal right to a “free appropriate public education.” A particular concern is the qualifications of personnel serving students with disabilities. Some county boards of education do not enforce the requirement that special education teachers be certified in that field, raising the possibility that personnel without appropriate training may be teaching students with disabilities.

There are specific concerns about the education of hearing-impaired students. The practice of hiring uncertified, less-proficient sign language interpreters to work in the schools, which in part reflects a shortage of highly trained interpreters, increases the isolation of deaf students in mainstream classrooms and makes the instruction from hearing teachers less accessible to them.

Adults with disabilities face many barriers to sustainable integration in the work force, most notably the lack of affordable health care coverage for people with substantial health needs. At the time of the forum, there was concern that to maintain health coverage under Medicaid and Medicare, many adults with disabilities had no choice but to remain on public assistance rather than accept paid employment.<sup>2</sup> Other barriers to employment include the lack of accessible public transportation, especially in rural areas, and the lack of assistive technologies in the workplace.

### **Recommendation 4.1**

The West Virginia Department of Education should monitor local school systems around the state to determine the extent of compliance with the Individuals with Disabilities Education Act (IDEA) and other federal disability laws, and should take steps to increase compliance. In particular, the Department of Education should enforce training and certification requirements for

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<sup>2</sup> A possible remedy to this concern is provided by the passage of the Ticket to Work and Work Incentives Improvement Act in late 1999, which allows people with disabilities to retain federal health benefits if they resume work. This point is described in greater detail in the U.S. Commission on Civil Rights report, *Sharing the Dream: Is the ADA Accommodating All?* October 2000, p. 34.

special education personnel working in local school systems.

### **Recommendation 4.2**

Because of concern about the proficiency of sign language interpreters hired by the schools, the West Virginia Department of Education should (1) consider requiring certification for interpreters working in mainstream classrooms and evaluate the impact such a requirement would have; and (2) consider measures to increase the long-term supply of proficient interpreters, which might include offering courses in American Sign Language to hearing students at the elementary-secondary level to promote career interest and proficiency.

## **Finding 5. Hate Crimes**

According to data collected by the West Virginia Hate Crime Task Force and the West Virginia Uniform Crime Reporting Program (UCR), most recorded hate crimes and incidents in West Virginia involve racial bias, followed by those with a sexual orientation bias. Until 1998, reporting of hate crimes to the UCR program was sporadic and incomplete. Indeed, only 37 percent of law enforcement agencies reported data to the state police in 1998. But since then, almost all agencies have begun to report hate crime data to the UCR program. Public officials have maintained that hate crimes and incidents are a serious problem in the state.

The Hate Crime Task Force, formed in 1992 as an advisory committee to the West Virginia Human Rights Commission, has greatly enhanced the state’s ability to prevent and respond to hate crimes and incidents. It has done so through collaborative efforts involving law enforcement agencies, civil rights organizations, school systems, and community groups. The task force is supported by a grant from the U.S. Department of Justice, as administered and approved by the West Virginia Division of Criminal Justice Services.

Despite the progress achieved, ongoing and expanded training is needed to increase the ability of law enforcement agencies to recognize and respond appropriately to hate crimes. It is critical to build greater awareness of the special characteristics of hate crimes as acts of intimidation and terror against classes of people, as

well as against the specific victims targeted. Such awareness is a prerequisite for taking action to prosecute hate crimes that occur, deterring future hate crimes, and creating a climate of community understanding that decreases the likelihood of such incidents.

In particular, it is important to consider ways to provide greater institutional continuity to the police training program. The program still depends heavily on the catalytic role of the West Virginia Hate Crime Task Force, an advisory committee without its own staff or offices.

#### **Recommendation 5.1**

Law enforcement officers are the front-line responders to hate crimes and incidents. Their ability to recognize hate crimes as such, report them to appropriate data collection programs, provide assistance to victims, and help bring perpetrators to justice can be enhanced through effective education and training on hate crimes. The training program underway since 1997, involving law enforcement agencies and the Hate Crime Task Force, should be given greater institutional support and continuity with a view to reaching more officers through preservice and in-service programs.

#### **Recommendation 5.2**

Because most hate crimes and incidents are committed by young people, often in and around schools, hate crime prevention programs in schools are a critical form of outreach. The West Virginia Civil Rights Team Project, launched by the Civil Rights Division of the West Virginia Attorney General's Office and currently underway in selected secondary schools, has shown great promise and should be expanded to other schools in the state.

#### **Recommendation 5.3**

Recognizing that people with physical and mental disabilities are sometimes targets of bias-motivated crimes, the West Virginia legislature should consider including people with disabilities as a protected class under the state hate crimes statute. As a first step, the legislature should examine relevant statutes in states that currently include people with disabilities as a protected class and assess the experience of their implementation.

#### **Recommendation 5.4**

In the light of the achievements of the Hate Crime Task Force, the West Virginia legislature should consider providing additional support and institutional base to the task force with a view to providing more permanence to its work and additional resources for its ongoing and planned programs.

## APPENDIX 1

### List of Forum Participants\*

#### 1. Community Forum, Logan, West Virginia, November 17, 1998

##### *Panel 1: Police-Community Relations, Recruitment of Minority Officers, and Hate Crimes*

- Hilary Chiz, director, American Civil Liberties Union of West Virginia
- Joan Hill, attorney, Crandall, Pyles, Haviland & Turner, Logan
- Sgt. G.R. Johnson, West Virginia State Police, Logan Detachment
- First Sgt. Steve Cook, West Virginia State Police, Logan Detachment
- Paul Sheridan, senior assistant attorney general, Civil Rights Division, West Virginia Attorney General's Office
- Tim Tweed
- Pete Kelly, Logan County Community Action Group and Youth of the NAACP

##### *Panel 2: Equal Educational Opportunity, School-to-Work Program*

- Rick Wilson, American Friends Service Committee
- Wilma Zigmund, principal, Logan High School
- Dr. Pat White, Logan County Board of Education
- Margaret Fletcher, school-to-work curriculum coordinator, Mingo County Schools
- Peggy Vance, school resource assistant, Logan County Schools
- Eliza Jane Dillard, retired teacher, Logan County Schools
- Rev. Michael Pollard, social worker, Logan County

##### *Panel 3: Economic Opportunity, Employment Discrimination*

- Paul Sheridan, senior assistant attorney general, Civil Rights Division, West Virginia Attorney General's Office
- Rev. David Bell
- Gracie Adkins
- Marcia Ibos, director, Tug Valley Recovery Shelter, Williamson
- Joanne Farmer, outreach director, New Employment for Women, Logan
- Christopher Drummer, kitchen manager/trainee, Shoney's, Logan
- Rev. Franklin Jones, guidance counselor, Matewan Middle School
- John Fullen, president, Mingo County NAACP, and mayor of Matewan
- Rev. Steven Hairston, president, Logan-Boone NAACP
- Pete Kelly, Logan County Community Action Group and Youth of the NAACP
- Eliza Jane Dillard, retired teacher, Logan County Schools
- Walter W. Elmore
- Kenneth Ross

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\* Includes invited panelists and other speakers.

## **2. Community Forum, Morgantown, West Virginia, June 14, 1999**

### *Welcome*

- Frank Scafella, mayor of Morgantown

### *Panel 1: Civil Rights Concerns for Persons with Disabilities*

- Barbara Judy, ADA compliance officer, West Virginia University
- Reed Martin, attorney in private practice, Morgantown
- James S. Jeffers, director, West Virginia Division of Rehabilitation Services
- Helen Matlick, West Virginia Mental Health Consumers Association
- Ruby Losh, disability rights advocate
- Kent Bryson, staff attorney, West Virginia Advocates
- Dolly Ford, sign language interpreter
- Teresa McGonigle, sign language interpreter
- Tony Miralles
- Ken Ervin, advocate specialist, Northern West Virginia Center for Independent Living

### *Panel 2: Civil Rights Issues in North Central West Virginia*

- Leonard George, director, MBC United
- Delegate Charlene Marshall, member, West Virginia House of Delegates
- Debbie Hall, president, Morgantown NAACP (submitted written testimony)
- Allen Lee, president, Harrison County NAACP
- Dr. Katherine Bankole, director, West Virginia University Center for Black Culture and Research
- Kay Francis Meade, member, Fairmont City Council

### *Open Session*

- Dewey Berry
- Bredga Neal
- William Bunner
- Rev. Russell Medley, St. Stephen Baptist Church
- Patricia Bunner

## **3. Community Forum, Charleston, West Virginia, April 20, 2000**

### *Welcome*

- Jay Goldman, mayor of Charleston

### *Panel 1: Community Leaders and Civil Rights Advocates*

- Hilary Chiz, executive director, American Civil Liberties Union of West Virginia
- Rev. Homer Davis, president, Charleston NAACP
- Sherwood Brown, Raleigh County NAACP
- Marvin Smoots, Raleigh County NAACP
- Jason Huber, attorney, Foreman and Crane, Charleston
- Connie Lewis, Charleston
- Phil Carter, Cabell County NAACP
- Rev. James E. Murray, Allen Chapel A.M.E. Church, Charleston, and president, Charleston Police Civil Service Commission
- Polly Rempel, bail bondsman, Parkersburg
- Dallas Staples, president, West Virginia Black Law Enforcement Officers United

- Joan Porter-Green
- Delegate Arley Johnson, member, West Virginia House of Delegates
- William Boyd

*Panel 2: State and Federal Officials/Police Organization Representatives*

- Darrell V. McGraw Jr., attorney general, State of West Virginia
- Chuck Miller, United States Attorney's Office, Charleston
- Captain Steve Cogar, director of training, West Virginia State Police Academy
- Tom Rodd, senior law clerk for West Virginia Supreme Court of Appeals Justice Larry Starcher
- Chief Jerry Riffe, chief of police, Charleston Police Department
- Captain R. E. Wilson, Parkersburg
- Eddie St. Clair, vice president, West Virginia Troopers Association
- Rudy Jefferson, president, Marion County NAACP
- Andrew Mayer
- David Stewart, West Virginia Advocates

*Panel 3: Other Civil Rights Issues in the Charleston Area*

- Barry Bowe, principal, Chandler Elementary School, Charleston
- Rev. Alfonso Heyliger, Ferguson Baptist Church, and president, Charleston Black Ministerial Alliance
- Romona Taylor Williams, executive director, REDEEM, Charleston
- Erica Collier, student, Roosevelt Junior High School, Charleston
- Jarrick Hall, Roosevelt Junior High School, Charleston
- Levetta McKnight, Hope Community Development, Charleston
- Isaiah White, Roosevelt Junior High School, Charleston
- Eileen Lee
- Dr. Evans

APPENDIX 2

Janice B. Christopher, Assistant Superintendent, Division of Pupil Services,  
Monongalia County Schools, Letter, May 29, 2002

**Monongalia County Schools**

Dr. Janice B. Christopher  
Assistant Superintendent  
Division of Pupil Services  
13 S. High Street  
Morgantown, WV 26501

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Telephone (304) 291-9210, Ext. 543  
Fax (304) 296-1379

May 29, 2002

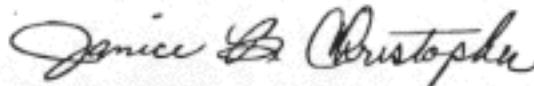
Mr. Marc Pentino  
Civil Rights Analyst  
Suite 500  
624 Ninth Street, NW  
Washington, DC 20425

Dear Mr. Pentino:

Please find attached Monongalia County Schools' responses to the draft report entitled "Civil Rights Issues in West Virginia." The responses are specific to allegations pertaining specifically to Monongalia County.

Should you have questions after reviewing the attached information, please don't hesitate to let us know.

Sincerely,



Janice B. Christopher, Ed.D.  
Assistant Superintendent of Pupil Services

Cc: Dr. Michael J. Vetere, Superintendent  
DeEdra Lundeen, Director of Special Education  
Dan McGinnis, Manager of Human Resources

With regard to the allegation there are problems in employment and education as well as other discrimination faced by people with disabilities, no examples were given to substantiate the statement. Monongalia County practices nondiscrimination in the hiring process and can cite situations in which accommodations have been made for disabled persons. For example, a secretary whose medical disability prohibits her from driving a car has been given permission to adjust her work hours in order to be driven to work. There has not been a disability discrimination complaint called to administrators' attention that has not been responded to appropriately. Additionally, persons with disabilities are not excluded from employment opportunities if they meet the qualifications for a given job.

With regard to the allegation that Monongalia County fails to recruit and hire significant numbers of minority professionals, resulting in a lack of minority role models for students, it should be noted Monongalia County Schools has always been an equal opportunity employer and has sought minority employees for many years. Even though there are a very limited number of minority applicants seeking positions in our school system, progress has been made. The WV Advisory Committee Draft indicates that only six (6) of the 1,281 full-time school employees were minority at the time of the hearings; however, at the present time the number of minority staff has doubled to a total of twelve (12). Nine (9) African Americans and three (3) Hispanics are full-time employees; eight (8) of the minority staff are professional and four (4) are service personnel. During the past recruiting year, administrative staff recruited at nine colleges and universities, however, only two minority persons expressed interest in employment

with Monongalia County Schools. During the recruiting visitation, the participating administrators observed that minority applicants were more interested in interviewing with large urban school systems and showed a lack of interest in smaller towns and communities. During the 2002-03 recruiting process, Monongalia County Schools will continue to seek minority applicants and will visit a minimum of three colleges and/or universities with predominantly minority populations.

With regard to **Chapter 3, point 2, "Barriers to educational opportunities for people with disabilities,"** Monongalia County Schools provides the following clarifications: Mr. Martin, a plaintiff's attorney not licensed to practice law in West Virginia, offered testimony "citing" a 1998 West Virginia Department of Education (WVDE) – Office of Special Education report on Monongalia County Schools' compliance with the Individuals with Disabilities Education Act (IDEA.) It should be noted that Mr. Martin's "citations" were either out of context or did not provide the full picture as noted in the monitoring report.

Specifically, **with regard to the allegation that Monongalia County Schools "failed to hire qualified special education teachers,"** it should be noted that although certification issues were present for the 35 teachers discussed in the monitoring report, only 2 were teaching on an out-of-field- authorization. The other 33 teachers were in the process of completing the appropriate paperwork to ensure that their certificates/permits were current. As of this date, Monongalia County Schools' special education department, in tandem with the personnel department, has developed an ongoing tracking procedure to

ensure all new and tenured personnel are appropriately certified/permitted at the beginning of each school year. Enclosed please find a redacted copy of said tracking report. Mr. Martin also indicated "Monongalia County Schools does not attempt to comply with certification requirements." This statement is without merit and is simply untrue. See above.

**With regard to the allegation that Monongalia County Schools "failed to develop IEPs,"** it should be noted that WVDE randomly pulled only 50 IEPs for review; this reflects approximately 2 percent (2%) of the total number of current IEPs in Monongalia County. Although there were certainly human errors of note, Monongalia County Schools has and will continue to provide staff development to all administrators and special educators that encompasses the purpose and appropriate methods to ensure compliance with regulations that govern IEPs. Also, as of this date, Monongalia County Schools has a process in place to ensure IEPs are written appropriately; county-level special education coordinators randomly review all IEPs to ensure compliance with IDEA regulations. Enclosed please find a copy of the checklist used when staff monitors IEPs for compliance.

**With regard to the allegation that Monongalia County Schools "failed to collect required data,"** it should be noted that WVDE randomly reviewed as few as 10 teacher class lists. This is approximately seven percent (7 %) of the total special education teacher class lists. As stated above, human error can cause class lists to be skewed. As of this date, Monongalia County Schools periodically (at least quarterly) double-checks

the accuracy of teacher class lists via WVEIS printout. Enclosed please find a redacted sample of a teacher class list that would be sent to the school for review and revision, if needed. This process ensures, to the extent possible, the accuracy of teacher class lists. With regard to extended school year (ESY) data collection by teachers, it should be noted that Monongalia County Schools' special educators have always been provided staff development that encompasses how to collect appropriate data for the determination of ESY. It should also be noted that special educators have consistently collected data for ESY. However, in 1997/98, just after the reauthorization of IDEA, Monongalia County Schools had no centralized method of ESY data collection. As of this date, Monongalia County Schools uses the enclosed forms for the collection and reporting of extended school year data.

With regard to the allegation that Monongalia County Schools "failed to eliminate segregated classrooms," this statement is simply untrue. Monongalia County Schools has, within the physical constraints of each school facility, eliminated all segregated classrooms. Monongalia has and will continue to provide a very inclusive atmosphere to all special needs students in all schools. The Monongalia County Board of Education attempted to pass an 80 million dollar bond in November 1998 specifically for upgrading and/or building new facilities. This, of course, included ensuring compliance with the Harris vs. Marockie ruling at each school in Monongalia County. Although this bond failed, the Board of Education is in the process of attempting to pass another bond in the fall, 2002. A copy of the 1998 Monongalia County Schools Master Facilities Plan and

bond election results is available for OCR's review upon request during regular business hours.

With regard to the allegation that the submission of written plans for correcting the violations indicated in the WVDE's 1998 monitoring report "would not be enough, in light of the county's record of failing to comply with the 1991 court order and with other corrective actions ordered by state and federal authorities," this is, again, untrue. Enclosed please find a copy of the corrective actions submitted by Monongalia County Schools to WVDE. To date, all corrective actions have been completed and/or are on-going.

Mr. Martin's statement that "a pattern of consistently ignoring special education students exists in Monongalia County" is unfounded, lacks merit and is untrue.

Monongalia County Schools has and continues to provide a continuum of quality special education and related services to identified special needs students in our public schools. The Office of Civil Rights has an open invitation to visit our schools, including our alternative learning center (ALC) and behavior intervention classrooms (BIC) to review the fine programs and services we provide for all of our exceptional students.

With regard to the allegation that criminal background checks were not done for all persons before employment and that one specific citation suggests a lower employment standard for personnel who serve disabled students, it is important to note there may have been human oversight regarding a particular individual but it seems

very inappropriate to conclude that this had anything to do with the fact that this person would be working with disabled children. Monongalia County Schools does have a procedure in place for making sure that all employees have a criminal background check before being recommended to the Board of Education for employment. In fact, since January 1, 2002, WV Code requires that all new prospective staff undergo two levels of fingerprinting and criminal background checks—State and National.

**With regard to the allegation that “County officials have not been forthcoming with documents they are required to make public,** this is, again, untrue. Specifically, it is Monongalia County Schools’ understanding that, in compliance with the Office of Civil Rights’ rulings, all documents, including job postings, which are for public review, must include a nondiscrimination clause. Enclosed please find a copy of a letter from Dr. Janice Christopher, requiring such inserts into publication as well as a copy of the current nondiscrimination clause place in all publications.

**Mr. Martin also alleges that the “Monongalia County School Board withholds its plan for the use of IDEA funds.”** Again, this is simply untrue. At no time has review of any public document been refused by the Board of Education. With regard to the Special Education IDEA Entitlement Funds Grant, enclosed please find a copy of the annual publication of the invitation to any citizen to review this plan. Also, please know that this document, in final form as approved by the WVDE, is always on file in the Monongalia County Schools’ Office of Special Education and can be accessed by anyone

who would like to review it by making an appointment for that review during regular business hours.

With regard to the allegation that there is a climate of hostility and insensitivity to students with disabilities and their parents, and, more specifically, that "when a parent asks about something, they are not responded to, but are attacked", please know that Monongalia County Schools staff works diligently and respectfully with all parents of exceptional students in our public schools. Unfortunately, on rare occasions parents do interpret disagreement between themselves and the school district as insensitivity to their desires/concerns. During the 2001/02 school year, parents of exceptional children in Monongalia County have filed only one state complaint; parents of exceptional children in Monongalia County have filed no OCR or civil suits. Monongalia County Schools works cooperatively in a "give and take" relationship with the parents of exceptional students, to the extent that the parent is willing to be a cooperative partner in the process. To foster a cooperative atmosphere with parents, Monongalia County Schools has developed a "Handbook for Parents of Exceptional Students," provided to them on request or simultaneous to requesting permission to initially evaluate their child. This handbook provides the parent with information so they can become knowledgeable partners with Monongalia County Schools to provide a free, appropriate, public education to their identified special needs child. Please find included in the attached information a copy of the Handbook.

With regard to the allegation that the Monongalia County School Board "can and sometimes does refuse to continue dealing with the parent as advocate for the disabled young person," this statement is, again, untrue. Monongalia County Schools is required by IDEA regulations to inform a student who will be reaching majority (turning eighteen [18] years old) prior to the next Individualized Education Program (IEP) meeting that all rights regarding his/her decision making with respect to his/her education will be imparted to him/her upon his/her eighteenth (18<sup>th</sup>) birthday. It is Monongalia County Schools practice to adhere to these regulations. Enclosed please find a copy of the brochure Monongalia County Schools provides to identified special needs students to inform them of the transfer of rights upon age of majority. At no time does Monongalia County Schools refuse to deal with the parent as the child's advocate. On the contrary, Monongalia County schools **always** continues to invite and encourage parents to be a part of the student's IEP team meetings unless specifically requested by the student who has reached majority not to include the parent.

With regard to the allegation that Monongalia County School Board disregards people with disabilities by having county personnel "housed upstairs in a building that is inaccessible to people with mobility impairment...", again, is simply untrue. The Monongalia County Schools' central office building is accessible to persons with mobility impairment. Specifically, there are designated handicapped parking spaces outside an accessible doorway. The boardroom and bathroom on the first floor are handicapped accessible. Any persons housed on the second or third floor that need to meet with a mobility-impaired person simply meets that person on the first, accessible

floor. For example, the West Virginia Education Association's representative assigned to represent all of Monongalia County Schools' WVEA members is, himself, mobility impaired. Accommodations are made for him each time he comes into the central office, which is often, with no problem at all.

**With regard to the allegation that deaf children may suffer from isolation in mainstream classrooms,** Monongalia County Schools agrees. By the very nature of the disability, hearing impaired and deaf children are isolated from their teachers and peers because they cannot communicate effectively. However, Monongalia County Schools provides, to the extent possible and appropriate, an inclusionary program for all hearing impaired and deaf students. Specifically, all hearing impaired and deaf students are provided some, if not all, of their instruction with non-identified, age appropriate peers. This follows with the IDEA's premise of least restrictive environment. Interpreters are used as deemed appropriate by each individual student's IEP. Monongalia County Schools disagrees with the statement that the West Virginia School for the Deaf in Romney, West Virginia provides "accessible instruction." The West Virginia School for the Deaf is a residential facility for deaf students; it does not accept/teach age appropriate hearing peers. Therefore, again based on the IDEA's premise of least restrictive environment, an inclusive regular education placement with an interpreter in Monongalia County Schools is less restrictive than a residential placement with no interpreter at Romney.

With regard to the allegation that only three of ten interpreters in Monongalia County Schools are certified, this is untrue. First, Monongalia County Schools has never had more than 4 interpreters working simultaneously during any one school year. Currently, Monongalia County Schools has 3 interpreters working with deaf children; one interpreter is herself deaf, one teaches/taught American Sign Language at Fairmont State College, and one is the child of deaf parents. Although Monongalia County Schools agrees that there are not enough quality, knowledgeable interpreters in West Virginia, Monongalia County Schools is fortunate to employ quality, proficient interpreters.

With regard to the statement that there is a demand among hearing students in elementary-secondary schools to learn ASL as a foreign language, but the public schools do not offer it, Monongalia County Schools agrees in the first part and disagrees in the second. Monongalia County Schools has long acknowledged the fact that many students in all grade levels are interested in American Sign Language. Therefore, from 1990 - 1999 Monongalia County Schools taught American Sign Language as a credit-generating elective in foreign language. Monongalia County Schools has also taught ASL through curricular and extra-curricular thematic units. Monongalia County Schools values teaching ASL for more than simply generating possible interpreters; we believe it is a way to build a bridge of understanding and communication between the deaf and their hearing peers that will last a lifetime.

Finally, with regard to allegations of favoritism and nepotism in the hiring process, please know that Monongalia County Schools follows all state personnel laws which

provide significant safeguards to prevent the very allegation made at the hearing. Our question about this allegation is whether there is evidence that a minority applicant was indeed denied a job as a result of nepotism or was this simply an accusation based on hearsay or malicious intent. The Monongalia County school district takes pride in the quality of its staff; we know such staff contributes significantly to the excellence of our school system (see attached newspaper article dated 5/19/02); therefore, you can be sure applicants are selected for employment based on characteristics which will enhance the overall strength of the school system, not on nepotism and favoritism.

APPENDIX 3

Fred VanKirk, Secretary/Highways Commissioner, West Virginia Department of Transportation, Department of Highways, Letter, May 28, 2002



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
**Division of Highways**

1900 Kanawha Boulevard East • Building Five • Room 110  
Charleston, West Virginia 25305-0430 • 304/558-3505

Bob Wise  
Governor

Fred VanKirk, P. E.  
Secretary/Commissioner

May 28, 2002

Jerry Bird  
Assistant Commissioner

Mr. Marc Pentino, Civil Rights Analyst  
United States Commission on Civil Rights  
Suite 500  
624 Ninth Street NW  
Washington, D.C. 20425

Dear Mr. Pentino:

This is in reply to your correspondence dated May 13, 2002 regarding the West Virginia Advisory Committee Report.

I appreciate the opportunity to make a response to the statements that have been received by the Commission regarding the West Virginia Division of Highways. Because the information in the Report primarily quotes Walter Elmore or newspaper articles, it would not be appropriate for me to make corrections or changes to the actual wording. However I would like to note the following and ask that you consider incorporating this information into the Report:

- The newspaper article and the testimony of Mr. Elmore which are quoted both preceded a finding of **No Probable Cause** on Mr. Elmore's complaint by the West Virginia Human Rights Commission. Specifically, the Commission's ruling stated "Complainant's name never appeared on the Division of Personnel's roster which was provided to the Department of Highways, and therefore, Complainant could not be considered for a position with the Department of Highways." The ruling went on to note that "after receiving assistance in correctly filling out the application, Complainant was ultimately hired by the Respondent."

E.E.O. AFFIRMATIVE ACTION EMPLOYER

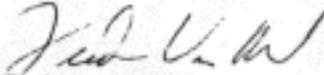
- The Division of Highways became aware of Mr. Elmore's concerns when he filed with the Human Rights Commission, investigated the reason he was unsuccessful in securing employment, discovered the problem (his employment applications submitted to the West Virginia Division of Personnel were deficient), and assisted him in properly completing the application. We employed him irrespective of his Human Rights Complaint and did not seek from him an agreement to drop his complaint in exchange for employment.
- We believe Mr. Elmore's conclusion that he was being treated unfairly resulted at least in part from his failure to realize there was not and is not a direct connection between welfare programs in which he participated and the civil service hiring process. In other words, the program on which he worked was designed to obtain services for the state in return for his receipt of public assistance, and to provide him with job skills that might lead to employment. There was no provision of any contract, agreement, or other written material that provided for participants in these programs to be hired by participating state employers in any manner other than the normal civil service hiring process.

In summary, the situation involving Walter Elmore does in fact detail the difficulty of an African American attempting to obtain employment within the classified service of state government. The same difficulties have been and are being experienced by hundreds of other job seekers. The civil service process is bureaucratic and difficult for the average job applicant to understand. However, when Mr. Elmore's concerns reached the attention of agency officials who were able to detect the problem with his application efforts, the necessary assistance was provided and he obtained employment.

Mr. Marc Pentino  
May 28, 2002  
Page Three

Thank you for the courtesy you have shown in permitting the Division to provide information on the concerns Mr. Elmore expressed in the course of making his complaint to the Human Rights Commission. While I understand my comments are rather lengthy, I hope you will see fit to include some portion in your report. Should you have any questions or require clarification, please contact our Human Resources Director, Jeff Black, at 304-558-3111.

Very truly yours,



Fred VanKirk, P.E.  
Secretary/Highways Commissioner

FV:Bj

APPENDIX 4

Wendella P. Fox, Director, Philadelphia Office, Office for Civil Rights,  
U.S. Department of Education, Letter, June 5, 2002



**U.S. DEPARTMENT OF EDUCATION**  
THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PENNSYLVANIA 19107

OFFICE FOR CIVIL RIGHTS

WENDELLA P. FOX  
DIRECTOR  
PHILADELPHIA OFFICE  
EASTERN DIVISION

June 5, 2002

Mr. Marc Pentino, Civil Rights Analyst  
US Commission on Civil Rights  
Eastern Regional Office, Suite 500  
624 Ninth Street, NW  
Washington, D.C. 20425

Dear Mr. Pentino:

This is in response to your memorandum to me of May 6, 2002, which enclosed Chapter 3 of your draft of the West Virginia Advisory Committee report for our review. Thank you for this opportunity to comment on the draft.

I am particularly concerned about the statements quoting Mr. Reed Martin found on page 36 of the draft report. Mr. Martin's characterization of OCR's enforcement of Section 504 is simply not correct.

Mr. Martin states that OCR will close cases based on an oral, verbal representation by a school official that remedial action will be taken to correct deficiencies in compliance with the law. He further intimates that OCR places the burden of monitoring settlement agreements on complainants. This is not the case.

Where fact-finding indicates compliance concerns, OCR requires that the recipient either immediately correct the situation, or agree in writing to correct the concerns at a reasonable time in the future. Under no circumstances will OCR accept the verbal promises of a recipient to correct compliance problems in order to resolve a complaint.

Where compliance problems have been identified, resolution letters contain written agreements, signed by the school officials, that indicate what specific steps will be taken by the school to remedy the identified concerns. These agreements most often contain both deadlines for implementation and monitoring provisions for OCR to ensure that all of the terms of the resolution agreements have been fulfilled.

Our Mission is to Ensure Equal Access to Education and to Promote Educational Excellence Throughout the Nation.

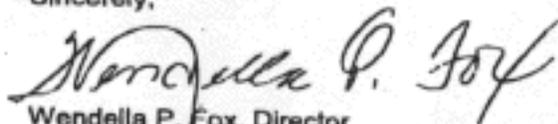
These resolution agreements are provided to the complainants, so that they will know what is expected of the schools and when. OCR is always grateful for any information that a complainant may have regarding a school's compliance with a resolution agreement, and takes into account any information provided by complainants in determining whether the terms of a resolution agreement have been met. However, OCR independently fully monitors every resolution agreement until its successful completion, and does not rely on complainants to ensure that the terms of resolution agreements have been met.

When OCR identifies compliance problems, and a recipient refuses to sign a resolution agreement, or fails to meet the terms of a signed resolution agreement, OCR has at its disposal additional means to secure an appropriate resolution, including administrative action to withhold Federal funds to the recipient. While Mr. Martin states that he believes that the Philadelphia OCR has not taken enforcement action against a recipient in any recent Section 504 case, in fact, the Philadelphia office has moved to enforcement in four Section 504 cases since 1994, including a case in West Virginia in 1997. All four of these enforcement actions resulted in voluntary compliance agreements.

In short, when compliance problems are identified, OCR requires written resolution agreements from recipients, and monitors those agreements to ensure that they are fully implemented. If recipients refuse to remedy identified problems, or fail to implement resolution agreements, OCR can and does initiate formal enforcement proceedings.

I want to assure you that OCR takes very seriously its responsibility to enforce Section 504, and thank you for this opportunity to respond to the concerns raised in your draft report.

Sincerely,



Wendella P. Fox, Director  
Philadelphia Office  
Office for Civil Rights